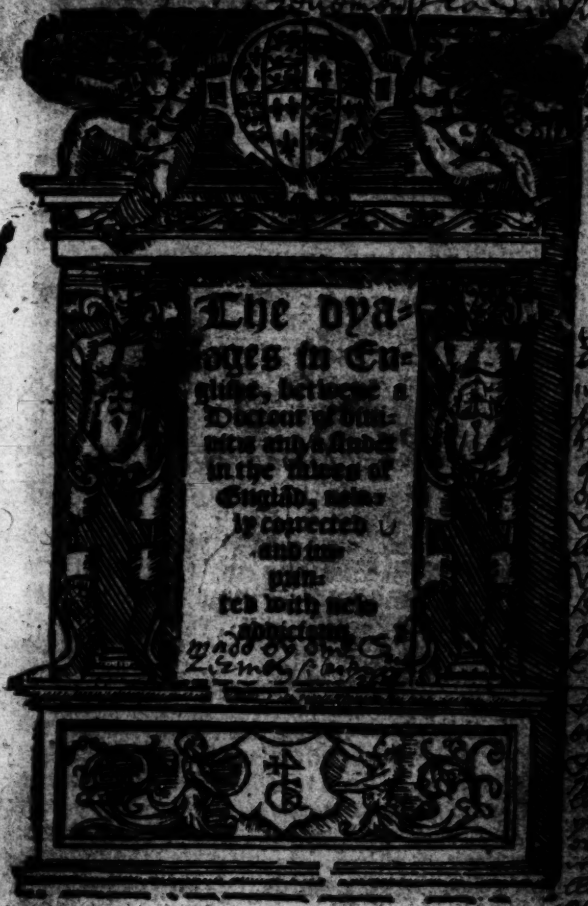
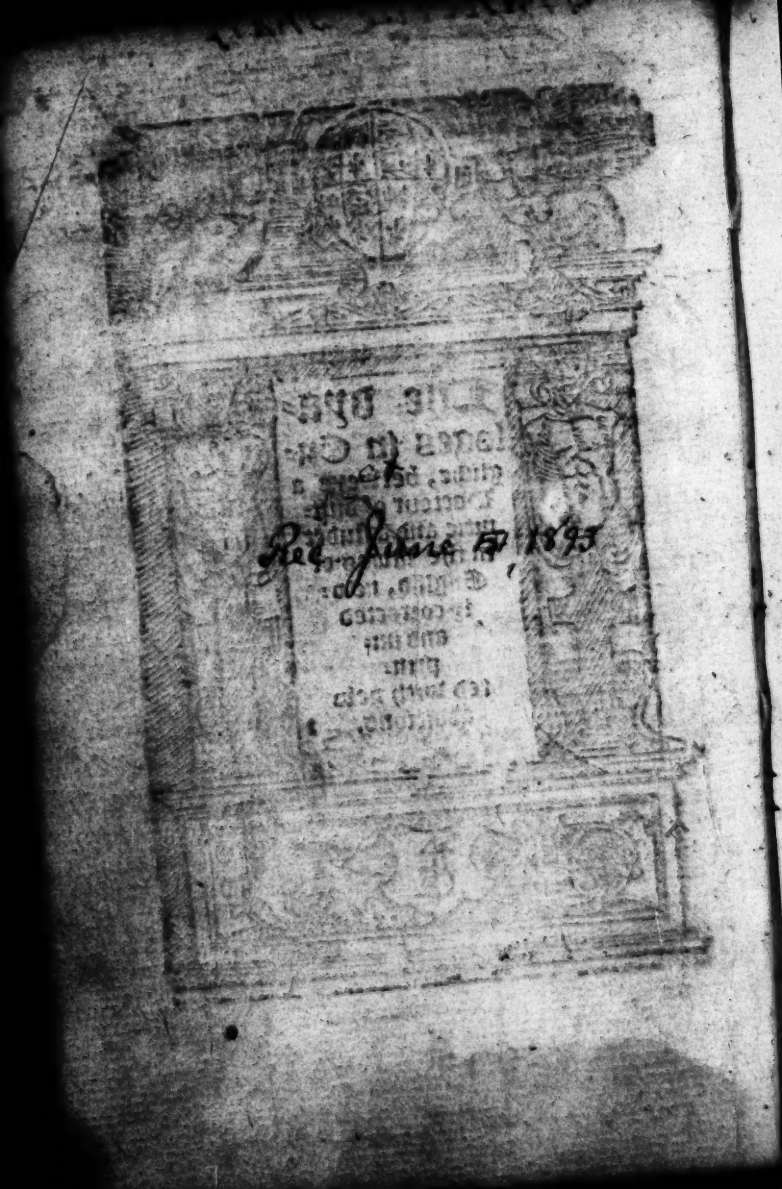

The dya-
loges in En-
glishe, betweene a
Doctour of diuini-
tee and a student
in the vniuer-
sitee of
England, newe-
ly corrected
and im-
prin-
ted with newe
additions.

24.
Barnard Elliott Percy



fundamentum legis Scotiae
247 ff 54 65

Thereafter followeth the fyrst dyalooge in Englysh, betwyxt a Doctour of Diuinite, and a Student in the lawes of England, of the grounden of the same lawes, and of conscience in many cases, and effectuously emprinted with dyuers additions.

The Introduction.

A Doctour of Diuinite that was of great acquayntaunce and familiarite with a Student in the lawes of Englande, sayde thus vnto hym. I haue had great desyre of long tyme to knowe whereupon the lawe of Englande is grounded: but because the most part of the lawe of England is written in the frenche tong, therefore I cannot through mine owne study attein to the knowlenge therof for in that tong I am nothing expert. And because I haue alwayes found thee a faithful frend to me in all my busines. Therfore I am bold to come to thee before any other to knowe thy mynde what be the verye grounden of the lawe of Englande as thou thynkest. Student. That would be a greate leysure, and it is also about my cunning to doe it. Neuertheless, that thou shalt not thynke that I would wylfully refuse to fulfill thy desyre, I shall with good wille doo

that in me is to farther thy minde, but I pray
thee that thou wouldest shewe me some what of
other lawes that pertayne moste to this matter
and that Doctours treate of, howe lawes haue
begonne. And then I will gladly shewe thee all
me thinketh what be the grounded of the lawes
of England. D. I will with good will dooe
as thou sayest, wherefore thou shalt vnderstande
that Doctours treate of foure lawes, the which
(as me seemeth) pertayne moste to this matter.
The fyrst is the lawe eternall. The seconde is
the lawe of nature of reasonable creatures, the
whiche as I haue heard say, is called by them
that be learned in the law of England, the law
of reason. The thyrde is the lawe of God. The
fourth is the lawe of man. And therfore I will
fyrst treate of the lawe eternall.

Of the lawe eternal.

The.i. Chapter.

Like as there is in every artificer a reason of
such thinges as are to be made by his craft,
so likewise it behoueth that in every gouernour
there be a reason and a foresighte in the gouer-
nance of such thynges as shalbe ordered & done
by him, to them that he hath the gouernance of.
And forasmuch as almighty God is the creatour
and maker of al creatures, to the whiche he is
compared as a workemaister to his worckes. And
is also the gouernour of al deedes and mouinges
that be founde in any creature. Therfore as the
reason of the wisdom of God (inasmuch as crea-
tures be create by him) hath the reason and fore-
sighte of al craftes and worckes that haue been
or shalbe

as the law of the realm of the wise house of God moueth or changeth by wisedome made to good ends, therein the name and reason of a law, and that is called the lawe eternall.

Also this law eternall is called the first law, and well called the first, for it was before all other lawes, and all other lawes be derived of it, whereupon saint Augustine sayeth in his first booke of free arbitrement, that in temporall lawe nothing is righteous nor lawfull, but that the people have deriued to them out of the lawe eternall, wherefore every man hath right and title to have that he hath rightfully of the right made ordinance of the first reason, which is the lawe eternall. &c. that hath my this time eternal be knowen for all the apostle writeth in the first Chapter of the first Epistle to the Romanes. Qui sunt, quia cognito deo non sicut deum glorificauerunt aut gratias egerunt deo, sed euanuerunt in cogitationibus suis, &c. that is to say, for that when they knew god, they glorified him not as god, nor thanked him as they ought, but they became vain in their thoughts, &c. Now all knowledge of true goodnesse, perfection of man and other creatures is reuealed by this lawe, for god should bind his creatures to a thing impossible to be done, it is no doubt, though it be impossible for us to know all the lawe eternall, that this manner of wayes pleasing God maketh this lawe eternall knowen to his creatures reasonable. First by the light of nature vnderstanding. Second, by heauenly reuelation. Thirdly by the order of a

[illegible] with the law of reason is written [illegible]
[illegible] every man shall [illegible] teaching
him what is to be done and what is to be left,
and the which thou thyself may never be put out
of the heart that knew it then. To have any o-
ther law bringing into other the acres & benefi-
ts of the people. Though the laws of reason
may not be changed every whole, but alway and-
nevertheless be upon the same written it shall gre-
dy let and blinded by evil customes and by many
[illegible] of the people beside the original thing,
and so much that it might hardly be discerned
what was right or not and what thing unright-
eous, and what good and what evil. Wherefore it
was necessary for the good order of the people
to have many things added to the law of rea-
son, as well by the church as by secular powers
according to the manners of the country and of
the people, where such additions should be ex-
pedient. Thus the light of reason differeth from
the law of God in two manners: For the law of
God is given by revelation of God, and so hath
all certain and infallible light of truth in it-
self. Also the law of God pertaineth more of it
self to the salvation of the soul than to the temporal
state of man. But the law of reason pertaineth
more to the temporal state of man in this world
than to anything else, & less pertaineth it to
the salvation of the soul. Wherefore sometime
it may be that those things that be lawful by the law
of reason be not lawful by the law of God.

1 — Thou shalt not kill. Also that thou shalt not be found guilty to be slain. Thou shalt not
2 — thou shalt do to another that thou wouldest not
that should do to thee. Also that we may do no
nothing

nothing against nature. Also that a man must
peaceably liue with other. That Iustice is to be
done to euery man: & that wrong is not be done
to any man. And also that a trespasser is worthy
to be punished and such other, of the whiche fo-
lowe diuers other secundary commaundemen-
tes the which be as necessary conclusions deri-
ued of the firste, as of that commaundemente
that good is to be followed, it followeth that a
man shal loue his benefactour: for a benefactor
in that he is a benefactour, includeth in him a
reason of goodnes, for elles he ought not to be
called a benefactour, that is to say a good doer
but an euil doer. And so in that he is a benefac-
tour, he is to be beloued in all tymes, and in all
places. And this lawe also suffereth many thing
ges to be done, as that it is lawful to put away
force with force. And that it is lawful for euery
man to defend himselfe and his goodes against
an vniuersal power. And this lawe remedy
with euelye mans lawe, and also with the law
of God as to the dedes of man, and must be al-
wayes kept and obserued, and shall shewe be-
clene what ought to folowe vpon the generall
rules of the lawe of man, and shal reknowe the
if they be in any thing contrarye vnto it. And
here it is to be vnderstande, that after some men
the tartes vnderstandinge there is common
warrance of the lawe of reason, that also in
the time of extreme necessitie. For they say that
the lawes of reason make not speciall rules, but
they say it is enident that the lawe of nature by all
thinges ought be in common is changed where
fore

Of the lawe of God.

The iii. Chapter.

The lawe of God is a certayne lawe geuen [illegible] reasonable creatures, shewing them the will of God, implying that creature reasonable ought to be bounde to some a thyng or not to doo it, for obteynyng of the felicitie eternall. And in this lawe (for the obteynyng of the felicitie eternall) are contayned the lawes geuen by reuelacion of God, for the politicall rewle of the people: the which are called Iudicials. For a lawe is not onely called the lawe of God, because it was shewed by reuelacion of god, but also because it directeth a man by the rewle of god to the felicitie eternall. And the lawes of the olde Testamente some, beyng called Ceremoniall, and some of the Iudges, and the rewle of the which is to vs no more vsuall, but onely to the Iewes, whom they were geuen: but the lawes of the olde Testamente, that were shewed by the mouthe of god, as the x. commaundementes, the lawe of the Euangelistes, and the lawe of nature, is not abrogated by the comming of our lorde Iesu Christe, but rather confirmed by the declaracion of our lorde Iesu Christe, and the lawe of god is alwayes righteous and iust, for it commaundeth nothyng but that is good, and forbiddeth nothyng but that is euyll. And the dedes of men be called righteous and iust, when they be done according to the lawe of god, for conformable to it. Also sometyme a lawe made by mennes [illegible]

then the goodes of the other. For they be three
gens mere temporal and haue nothing
doon in the other. And by the reason layues
made for the politicall order of the churche, bee
called many time statutes, as the layes of god
Deuteronomii 4. in the fourth parte. And other
be called rituls of the lawes of god. And in this
respect many be of them deceyued, and also be-
cause other the which be iudge the thinges to be
spirituall, the which all maner knowe be thin-
ges materiall and carnall. Here of see the wordes
of Iohn Gerson in the place aliedged be-
fore. Furthermore hauing the lawe of reason and
the lawe of man it was necessarye to haue the
lawes of god for foure reasons. The firste be-
cause man is ordeyned vnto the end of eternall fe-
licitie the which exceedeth the proporcion and
facultie of mannes power. Therefore it was ne-
cessarye that before the lawes of reason and the
lawe of manche should be diuersed to him enbe
by the lawe made of God. Secondly, forasmuch as
for the vncertainte of mannes iudgement in ma-
ny of the dedes of mannes thinges ne may fre-
quently fall in many perplexitie and grete falling
of doubte vnto the lawe of reason be very many
mens of sundry mens and diuersitie of
lawes, and therefore to the entente that man
myght more surely know what he should doo
and what he should not doo, it was necessarye
that there were by the lawe of god. Thirdly,
forasmuch as the iudge may not see the hertes
of men, but only the outwarde dedes, and
many iudge

leges spiri
uales vel
ecclesiasti
ce est que
ad finem
sunt ab ordinem
politicum
ecclesie.

leges ritu
les vel
ce est
temporales
seu leges hu
manis sta
tutis.

...ment, and the iudgement of man hang not
...of all inwarde thinges, but onely of outwarde
...things, and neuertheles it behoueth vs ver-
...ly that a man be well armed in harte, that
...he may be well fauored in outwarde. Therfore
...it is necessary to haue the lawe of God, the
...which speaketh ouer a man all out of outwarde thin-
...ges as of vnknowen things. The fourth is, be-
...cause as saint Augustine saith in the first boke
...of free gouernaunce, the lawe of man maye not
...punishe all offences, for if all offences ought be
...punished by the common wealth there shuld no
...lif in no contractes. For if cannot be denied, but
...that as long as contractes be suffered, many of-
...fences shal folowe thereby, and yet shal be suf-
...fered for the common welth. And therfore that
...no euil should be vnpunished, it was necessary
...to haue the lawe of God that shuld leaue no
...euil vnpunished.

¶ Of the lawe of man.

The.iii. Chapter.

The lawe of man the which sometime is cal-
led the lawe positiue is deemed by reason
as a thing which is necessarily and probable, for-
asmuche of the lawe of reason, and of the lawe
of God. And that is called probable that appe-
reth to many, and specially to wyse men, to be
true. And therfore in euery lawe positiue well
vnder is some what of the lawe of reason, and of
the lawe of God: and to discerne the lawe of
God and the lawe of reason fro the lawe posi-
tiue is verye harde. And thoughe it be harde yet

it is

it is muche necessary in euerye in your doctrine,
and in all lawes made for the common weale.
And that the lawe of man be iust and righteous,
two thinges be necessary, that is to say, wilfoun
and auctoritie. wilfoun, that he may iudge after
reason what is to be done for the communal-
tie, and what is expedients for a peaceable rule
nersation, and necessarye sustennation of them.
And noted that he haue auctoritie to make lawes.
For the lawe is named of Ligare: that is to say
to binde. But the sentence of a wise man doeth
not binde communalties, if he haue no rule ouer
them. Also to euery good lawe be required these
properties, that is to say, that it be honest, right-
wyse, possible in it selfe, and after the custome of
the countrey, conuenient for the place and time,
necessary, profitable, and also manifest that it be
not captious by anye darke sentence, ne intri-
with anye priuate wealth, but all made for the
common wealth. And after Saint Wziget in the
fourth boke in the hundred xxxv. Chapter, euery
good law is ordeyned to the health of the soule,
and to the fulfilling of the lawes of god: and to
enduce the people to dye euill deiyes and
to doe good woorkes. Also as the Cardinall of
Cauerez wryteth: whatsoeuer is righteous in
the lawe of manne, is ryghteous in the lawe of
god, for euery mannes lawe must be consonant
to the lawe of God. And therefore the lawes
of princes, the commaundementes of prelates,
the statutes of communalties, ne yet the ordi-
naunce of the Churche is not righteous nor also
lawfully but it be consonant to the lawe of god.

And if ſuche a lawe of man that is diſcordant to the lawe of god, it appeareth manifeſtly to be no lawe, and goeth, and is therefore no lawe whatſoeuer a manne hath by ſuche lawes of manne, he hath right to ſuche. And whatſoeuer is pugnaunte ſuche lawes, is vnryghteouſe and vnlawfull. For lawes of manne not contrarye to the lawe of God, nor to the lawe of reaſon, muſte be obſerued in the lawe of the ſoule: and he that diſobeyeth them, diſobeyeth God and reſiſteth God. And furthermore, as Gratian ſayeth, becauſe euil men feare to offende for feare of paine. Therfore it was neceſſary that ſynners paynes ſhoulde bee ordeyned for theyr offences, and publicians ordeyned diuers remedies for feare of ſyckneſſes. And ſuche paynes were ordeyned by the makers of lawes after the increaſe of the ſynne, and after the diſſolucion of the people. And though that lawe that ordeyned ſuche paynes bathe cheiefly a conformite to the lawe of GOD, for that the lawe of God commaundeth that the people ſhall take away euyll from among theme ſelfe, yet they belonge not ſo muche to the lawes of God, but that other paynes ſtandynge, the ſyrſte principles might bee ordeyned and appointed, and therefore that is the lawe that is called mans poſytyue the lawe poſytyue and the lawe of man. And the Philoſopher ſayde in the thyrde booke of hys Ethikes that the entente of a maker of a lawe is to make the people good, and to bryng them to bertue. And though I haue ſumpluit in a generalite the ende thes wherof the

lawe of England is grounded. For of neceſſitie it muſt be grounded of the ſayd lawes, that is to ſay of the lawe eternall, of the lawe of reaſon, and of the lawes of God. Nevertheleſſe, I pray thee ſhewe more ſpecially, wherevpon it is grounded as thou thynkeſt, as thou before haſt promiſed to doe.

S. I will with good wille doe therin that lyeth in me, for thou haſt ſhewed me a right plain and a ſtraught way thereto. Therfore thou muſt vnderſtand that the lawe of England is grounded vpon fyue principall grounds. Fyrſte it is grounded on the lawe of reaſon. Secondly on the lawe of God. Thyrdlye on dyuers generall cuſtomes of the realme. Fourthly of dyuers paſſed actes, that be called Maximes. Fyftlye on dyuers particuler cuſtomes. Sixthlye on dyuers ſtatutes made in parlamentes by the kyng and by the common counſell of the realme. Of which grounds I ſhall ſpeake by order as they be rehearſed before, and fyrſt of the lawe of reaſon.

Of the fyrſt ground of the lawe of Englande.

The. v. Chapter.

THe fyrſt ground of the lawe of Englande is the lawe of reaſon, wherof thou haſt treated before in the ſecond Chapter, the which is kept in this realme as it is in all other realmes and as of neceſſitie it muſt nedes be as thou haſt ſayd before. D. But I wolde knowe what is called the lawe of nature after the lawes of

England.

England. D. It is not lyke among the that be learned in the lawes of thy nature, for reason beyng a commaundement or monicion be the lawe of nature, and moste notable of all the reasons in that behalf is lyuyng that manner as other men do, for that is grounded vpon the lawe of nature: for by that reason ought euery man to do vnto another, as he wolde that other shulde do vnto him by the lawe of nature. Then that is against reason or that reason will not suffre that it be done. D. Then I pray thee tell me what that that be learned in the lawes of the realme, hold to be commaunded or monished by the lawe of nature, vnder such termes and after such maner as is vsed amongst them that be learned in the same lawes. D. There be out of them that be learned in the lawes of England two sortes of the lawe of reason, that is to saye the lawe of reason generall, and the lawe of reason secundarie, by the lawe of reason generall be punished in the lawes of England murther, that is the death of innocentes, periurie, breche of the peace, and many other like. And by the same lawe also it is lawfull for a man to defende himself against an vnlaufull power to be kepte in circumstaunce. And also if any promise be made by man as to the body it is by the lawe of reason holde in the lawes of England. The other is called the lawe of secundarye reason, the which is deuided into two braunches, that is to saye into the lawe of a secundarie reason generall, and into a lawe of secundarie reason particuler. The lawe of a secundary reason generall is grounded and deriued of that generall lawe of generall

And it is to be noted that all the bondage of seruitude in the lawes of England, proceedeth of the ciuill principles of the lawe, or of some other like occasion of the. And therefore no title prescriptiue ought to take effect in the lawes of England if it be grounded in the first principles of the ciuill lawes, neither beadles of forestes and chaces, and such, neyther be exempted by the lawes of England out of the lawe generall and common of property, for by the lawes of the realme no property may be of them in any person against their will. Nonetheles the customs of manors, seruices, or such other as vsed in the prouince of any person, be amongest the lawes tytles to belong to him that owneth the ground.

Of the .ii. ground of the lawe of England. The .v. Chapter.

The second ground of the lawe of England is the lawe of god and therfore for punishment of them that offended against the lawe of God, as it appeareth in many courses in this realme, as to say, for the any opinions heretycal or in any other matter against the true catholyke faith, and also if any generall custome ouer streytly against the lawe of god, or if any statute ouer streytly against it, as if it were ordayned that all children should be geuen for to worship images, this statute were voyde. Semblably the statutes in the yeare xxv. of king Edward the .iii. ordayned is to ordeyned that no man should receyue or entertayne Christ geue any almose to any beggers

D. III.

The wyfe ryghte lyke a Debtor

For more reporte for Diuorces Chap. XXVI. fo. 52. & 53.

he his wife frequently conveys goodes to John at Stile, and make his accompts & bye, the king takes the goodes, and after granteth them ouer to the executours, and after John at Stile sueth action out of the spirituall court against the executors, to haue execution of the wyll, in this case the iudges of the spirituall court must iudge the wyll to be good as the law of the realme is, that is so. And yet there is no such law of forfeiture of goodes by outlawary in the spirituall law.

¶ Of the third ground of the law of England. The .vii. Chapter.

THe third ground of the laws of England standeth vpon diuers generall customes of old time vsed through all the realme: which haue been accepted and approued by our Lord the king and his progenitours, and of their subiectes. And because the said customes be neither against the law of god, nor the law of reason, and haue been alwaye taken to be good and necessary for the comon wealth of all the realme. Therfore they haue obteyned the strength of a law so much that he that doth against them, doth against iustice. And these be the customes that properlye is called the comon law. And it shal alway be determined by the iustices whether there be any such generall custō or not, & not by .xii. mē. And of these generall customes & of certain principles that certain maximes which also take effect by the said custō of the realm, as shal appere in the chapters next following expressely made part of the law of this realme.

B.iiii. And

And therfore our louereygne lord the kyng at his coronacion among other thynges whych a lorde ought, that he shall cause all the customes of hys realme reasonably to be obserued. D. I wyll thys thynge be some of theyr generall customes. D. I wyll with good will, and tyme I shall fynde thee how the customes of the realme is the very ground of diuers courtes in the realme, that is to say of the Chaunserye of the kynges benche, of the common plees and the Exchequer, the which be courtes of recorde because none maye sitte as iudge in theyr courtes but by the kynges letters, patentes. And theyr courtes haue diuers auctho-rities, wherof it is not to treate at this time. Other courtes there be also euery grounded by the customes of the realme that be of muche lesse auc-thoritie then the courtes before rehersed, as in euery hyrde within the realme there is a court of record called the courte, and another that is called the Hundred courte, and in euery manner is a courte that is called a court Baron. And to euery fayre and market is incidente a courte that is called a court of Pyepowders. And thoughe in some statutes is made mencion sometime of the same courtes, yet nenertheles of the ryght institucion of the same courtes, and that such courtes ought to be, there is no statute nor lawe written in the lawes of Englande. And so al the grounde and beginning of the same courtes depend vpon the customes of the realme, the which customes is of so high auc-thoritie that the sayd courtes ne theyr auctho-rities may not be altered, ne theyr names chaunged without parliament.

Also

¶ Also by the olde custome of the realme no man may take inheritance vncreated nor other bodie politique, but he be put to answer by the tenure of the lande: and this custome is confirmed by the statute of Marleberge. xxvi. chapter.

¶ Also by the olde custome of the realme al men great and small shall be and receive iustice in the kinges courtes, and this custome is confirmed by the statute of Marl. i. chapter.

¶ Also by the olde custome of the realme the eldest sonne is onely heyre to his auncestour, and if there bee no sonnes but doughters, then all the doughters shalbe heyre: and so it is of sisters and other kynswomen. And if there be nother sonne, doughter, brother, nor sister, then shall the inheritaunce discende to the next kinsman of kinne to the man of the whole bloude to hym that hath the inheritaunce of how many degrees soeuer they bee from hym. And if there be no heyre generall nor special then the lande shall escheate to the Lorde of whom the lande is holden.

¶ Also by the olde custome of the realme landes shall neuer discende, nor discend from the sonne to the father or mother, nor to any other auncestor in the right line, but it shal rather escheate to the lord of the fee.

¶ Also if any man haue a sonne that is an heyre after he is made Denizin and hath another sonne after purchaseth landes and dyed, the younger sonne shall inherite as heyre and not the elder.

¶ Also if there be three brethren and the middle brother purchase landes and dyed without heyre of his body, the eldest brother shall inherite

and heyres to him, and not the younger brother.

¶ Also if land in fee simple descende to a man of the part of his father, and he have brethren born of his body, then the inheritance that descends to the next heire of the part of his father. And if there be no such heyre of the part of his father, then if the father purchased the landes in that case to the next heyre of the fathers mother, and not to the next heyres of the fownes mother, but it shall revert as fee to the Lord of the fee, but if a man purchase landes to him and to his heyres, & dyes without heyre of his body, as is said before, then that land shall descend to the next heyre of the part of his father if there be any, and if not, then to the next heyre of the part of his mother.

¶ Also if the fowne purchaseth landes in fee and dyes without heyre of his body, the land shall discende to his uncle, and shall not discende to his father, but if the father have a fowne though it be many yeres after the death of the elder brother, yet that fowne shall put out his uncle and shall enioye the land as heyre to his elder brother for ever.

¶ Also by the custome of the realme the eldest sister is heyre before youngers in bastarde and bondage not in parte.

¶ Also the custom of the realme is that no manner of goodes nor catels real nor personel shall remain to the heyre, but to the executours, or to the ordinary of ecclesiasticall courts. ¶ Also the husband shall have all the catels personall of his wife that he had at the time of the spousels or after, & also catels real if he ouer liue his wife and

no heyre quod non sit Nota bene

nota bene

sell or giue away the chattels vnto another or by will
his or gett the euidence of the wolfe to deliuer vnto
them or else they shal remain to the wolfe of the right heir
her husband. ¶ Also the husband shal haue al the
inheritance of his wife during her life. Likewise
as he doe in the right of his wife during the posses-
sion in fee or in the taile generall for terme of life,
if he haue any childe by her to hold as tenante by
the curtesy of England: the wolfe shall haue the
third part of the inheritance of her husbands lands
he was seased of in fee or in taile after the posses-
sion. &c. but in y^e taile the wolfe at the death of her
husband must be of the age of.12. yeres or about or
else shall she haue no dowry. ¶ Item if y^e husband
at his death be vnder the age of.12. yeres. &c. I
suppose she shal not haue her dower. ¶ Also the
ciuil laws & custom of the realme is y^t after the death
of euery tenant that holdeth his lands by knightes
seruice the lord shal haue the ward and marriage
of the heyre that the heyre come to the age of.xxi.
yere. And if the heyre at that time be of full age at
the pleasure of his auncestor, then he shall pay to his
lord his relief, which is (the common law wotte
not certayne) but by the statute of Magna carta,
it is put in certayne, that is to say for euery hole
knightes fee to pay.C.s. And for a hole barony
to pay a.C. marke for relief. And for a hole Erldome
to pay a.C. li. and after the rate. And if the
heyre of the tenant be a woman, and she at the
time of her auncestors death be within the age of.xiii. yeres
then her lord into the should haue been in
[illegible] yere but by the statute of [illegible]
[illegible] lord [illegible] vpon [illegible]

Land [illegible]
[illegible]
[illegible]
[

And if at the death of her auncestor she be of the age of xviii. yere or aboue, she shalbe out of ward though the landes be holden of the king. And the lord shal pay reliefas an heyre male shal.

¶ Also of landes holden in socage of the auncestor bye, his heyre beyng within the age of xxi. yeres, the next frend of the heyre to whom the inheritaunce may not discend shal haue the warde of his body and landes vntil he shall come to the age of xxi. yere and then he may enter. And whe the heyre commeth to the age of xxi. yere, the the gardeyn shal yelde hym accomps for the profites therof by hym receiued.

¶ Also such an heyre in socage for his relief shall double his rent to the Lord the yere folowyng the death of his auncestor, as if his auncestor yelde by xii. d. rent the heyre in the yere folowyng shall pay the xii. d. for his rent, and other xii. d. for his relief. And the relief he muste pay though he be within age at the death of his auncestor.

¶ Also there is an old lawe and custom in this realme that a freehold by way of fee tayle or gift of fee tayle passeth not without liuery of seaton be made vpon the lande accordyng thought a dede of feoffement be therof made and deliuered, but by way of surrender, partition and exchaunge a freehold may passe without liuery.

¶ Also if a man make a royll of land wherof he is seased to hys heyre male as of fee, that royll is voyde, for it had stand in better vertues it had been good. And also in London such a royll is good by the custom of the cite if it be inrolled.

¶ Also a lease for terme of yeres is but a chatell

to

to

to the statute commaundyng hym that he shal
imparcell them vpon the engroſſe. And of this the
the ſayd iuſtyce it appeareth that the cuſtomes of
ſayd not other wyſe into them, wherefore he may
ſtamp in the lawes of Englande cannot be pro
ued to haue the ſtrength of a lawe only by reaſon
for how may it be proued by reaſon that the e
deſt ſonne ſhall onely inherite his father, and the
ponger to haue no part, or that the huſband ſha
haue the whole land for terme of his life, as t
maner by the courteſie in ſuch maner as before
appereth. And that the wyfe ſhall haue onely the
third part in the name of her dower, & that the
huſband ſhall haue all the goodes of his wyfe a
his owne. And that the dyeng the wyfe the
haue executours that haue the goodes, and not the
huſbande. All theſe and ſuch other cannot be proued
onely by reaſon that it ſhould be ſo and no other
wyſe although they be reaſonable, & that we
the cuſtom therin vſed ſuffiſeth in the lawe. And
ſtatute made againſt ſuch generall cuſtomes ought
to be obſerued becauſe they be not merely the law
of the realme.

[illegible] the lawe of prophetis is not the lawe
[illegible] but a lawe of cuſtom how be it that it
[illegible] and is alſo ryght neceſſarye to be kept in
realmes and among all people. And ſo it may
[illegible] numbred among the generall cuſtomes of
realme. And it is to vnderſtand that there
[illegible] that treateth of the beginning of the
cuſtomes how they ſhould be holden for
And therfore after the ſ be ſeerned in the
of the realme the old cuſtom of the realme

confideracion

consideracion why such maxymes haue ben ma
to the intent that other called ples may the mo
commenently be applyed to them. And they ha
the same strength and effect in the law as statut
be. And though the generall custom of the realm
be the strength and warrant of the said maxime
as they be of the generall customes of the realm
yet because the said generall customes be in mem
ne not ben enough the realme as well to them th
be vnlearned as learned. and may lightly be ha
and knowen, and that with little study. And th
maxymes be only knowen in the kynges courte
of among them that take great study in the law
of the realme, & among fewe other persons. Ther
fore they be set in this writing for generall good
and he that listeth may to accompt them, or pe
ayell he may take them for one ground after he
pleasure, of which maxymes I shall hereafte
shewe the part.

First there is a maxime that escuage hold
tayn maketh knyghtes seruice.

Also there is another maxime that escuage ce
tayn maketh forage.

Also that he that holdeth by escuage hol
holdeth by knyghtes seruice, but he holdeth not b
escuage. And that he that holdeth by seruice to
ward of a castell holdeth by forage.

Also there is a maxime that a patent take
away an entre.

Also that no prescripcion in landes maketh
ryght.

Also that a prescripcion of rent and of seruice
appendent out of land maketh a ryght.

Also that the limitacion of a prescripcion ge-
nerally taken is fro the time that no mans mynde
renneth to the contrary.

Also that alleigne may be made vpon landes
geuen in fee for tearme of life, or for terme of
yeres thoughe no mencion be made of alleigne:
and that same lawe is of a rent that is graunted,
but otherwise it is of a warranty and of a tres-
pas.

Also that a conviction to auoyde a fre holde
cannot be pleaded without dede, but to auoyde
a gyft of a chatel it maye be pleaded without
dede.

Also that a release or a confyrmacion made
by hym that at the tyme of the release or confir-
macion made had no right to bynde to the land,
thoughe a right come to hym after, except it be
with warranty, and then it shall barre hym of al
right that he shall haue after the warrantye
made.

Also that a right of tyrle of action that can-
not depende in action cannot be geue nor grau-
ted to none other but onelye to the tenaunt of
the ground, or to hym that hath the reuersion or
remaynder of the same lande.

Also that in an actio of dette vpon a contract
the defendaunt maye wage his lawe, but otherwyse
is it vpon a dede of landes for terme of yeres or
at will.

Also that if an exigent in case of felony be
awarded against a mannes body wherby fourty pen-
nies may be geuen to the kyng.

Also, if the lande be attayned in the tyme of

the father, and after he purchaseth hys charter of pardone of the king, and after the father dyed. In thys case the lande shall eschete to the lord of the fee, notwithstanding that though he haue a gongar that he get the land shall not discend to hym for by the attendre of the elder brother, the bloud is corrupte, and the father in lawe dyed without heyre.

Also, if an Abbot or a Priour alliene the landes of hys house and dyed, in that case, though his successor haue right to the landes, yet he may not entre but he must take hys action that is appointed hym by the lawe.

Also there is a custome in the lawe, that if a bellegne purchase landes and the lord entre, he shal enioy the lande as his owne: but if the villayn aliene before the lord entre, that alienation is good. And the same lawe is of goodes.

Also if a man stroke goodes to the value of xii. d. or aboue, it is felony, and he shal dye for it. And if it be vnder the value of xii. d. then it is but petite larcine, and he shal not dye for it, but shalbe otherwyse punished after the discretion of the Iudges, except it be taken fro the person, for if a man take any thyng how little soeuer it be, from a mannes person feloniously, it is called robbery, and he shal dye for it.

Also he that is arrayned vpon an inditement of felonye shall be admitted in fauour of lyfe to challenge xxxv. iurors perentorily, but if he challenge any aboue that nomber, the lawe iudgeth him as one that hath refused the lawe, because he hath refused those whose challenges

therfore he that dye but with cause he may chalenge as many as he hath cause of chalenge to. Also farther it is to be vnderstand, that such persons chalenge that not be admitted in appele because it is at the suite of the partie.

Also the land of every man is in the lord enclosed as other, though it lye in the open feild. And therfore if a man doe a trespas, therein the lord maie haue quare clausum fregit.

Also that venues, commons of pasture of tuf- quere de
bary tenements remaynders & nor suche other Annuitie
thynges whithe lye not in manuel occupation, nec rent
may not be geuen nor graunted to none other
without writing.

Also that he that recouereth debte or damage in the kinges court by such an action within a Capias ad satisfaciendum, and to committe him to prison vntil he haue paydo the dett & damages, but if there be no Capias in the first action, then the plaintife shal haue no Capias ad satisfactendum, but shall take a fieri facias, or an Elegit within the yere: or a Scire facias after the yere, or within the yere if he will.

Also if a release or confyrmacion be made to hym, that at the tyme of the release made hadde nothynge in the lande &c. The release or confirmacion is voyde except certayne causes, as is douchie and certayn other which nede not here to be remembred.

Also there is a statute in the lawe of England, that the kyng may dispark no man of

that no man may release the kyng his suit ney
retention of remaynder out of hym.

Also the kynges excellencie is so hede in the
lawe, that no freehold may be geuen to the kyng
ne bee derayed from hym, but by matter of re-
corde.

Also, there was sometyme a Maxime and a
lawe in England that no manne shoulde haue a
writte of right, but by speciall suite to the kyng,
& for a fyne to be made in the chauncery for it. But
these maximes be chaged by the statute of Magna
carta, the xxi. Chapter, where it is said thus.
Nulli negabimus, nulli differemus rectum aut
iusticiam. And by the wordes nulli negabimus,
a man shall haue a writte of right of course in
the Chauncerie without suing to the kyng for
it. And by the wordes, nulli differemus, he shal
haue it without fynerund so many times the old
Maximes of the lawe be chaunged by statutes.

Also, though it be reasonable that for the ma-
nifold diuersities of actions that be in the lawes
of England, that there shoulde be diuersities of
proces, as in the reall actions after one maner
and in personall actions after an other maner:
yet it cannot be proued mereiye by reason that
the same proces ought to be had & none other:
for by statute it might bee altered. And so the
ground of the said proces is to be referred on-
ly to the Maximes and customes of the realmes.
And I haue shewed these these Maximes be-
fore rehearsed, not to the entent to shewe thee
specially what is the cause of the lawe in them,
for that would aske a great reporte. But I haue

shewed

helped the onely to the entent that thou mayst perceiue that the sayd Maximes and other like, may conueniently be set for one of the grounds of the lawe of England. Moreouer, there bee diuers cases, whereof I am in doubte whether they be onely Maximes of the lawe or that they be grounded vpon the lawe of reason, wherein I pray thee let me heare thyne opinion.

D. I pray the shew those cases that thou meanest, and I shal make thee answere therein as I shall see cause.

Hereafter foloweth diuers cases, wherein the Student douteth whether they be onely Maximes of the lawe, or that they be grounded vpon the lawe of reason.

The.ix. Chapter.

The lawe of England is, that if a man commaunde another to doo a trespasse, and he doeth it, that the commaunder is a trespasser. And I am in doubte whether that be onely by a Maxime of the lawe, or that it be by the lawe of reason.

Also, I am in doubte vpon what lawe it is grounded, that the accessory shal not be putte to answere before the principall. &c.

Also, the lawe is that if an Abbot bye a thing that commeth to the vse of the house, and dyeth that his successours shall be charged. And I am some what in doubte vpon what grounde that

lawe dependeth.

Also that he that hath possession of land, though it be by disseason hath right against all men, but against him that hath right.

Also, that if an action reall be sued against any man that hath nothing in the thing demaunded, the writte shal abate as at the comon lawe.

Also that the alienacion of the tenant hāging the writte nor hys entre into religion, or if he be made a knight, or if she be a woman and take an husband hangyng the writte, that the writte shall not abate.

Also if land and rent that is going out of the same land come into one mannes hande of lyke estate and like sisterie of tytle, ỹ rent is extinct

Also if land discend to him that hath right to the same lande before, he shalbe remitted to hys better tytle if he will.

Also if two tytles bee concurrant together, the eldest tytle shalbe preferred.

Also that every manne is bound to make recompence for such hurt as his beastes shal doe in the corne or grasse of hys neighbour, though he know not that they wer there.

Also if the demaundaunte or playntyfe hangynge hys writte wyll entre into the thynge demaunded, thys writte shall abate. And it is manye tymes very harde and of great difficultie to know what cases of the law of England bee grounded upon the lawe of reason, and what upon custome of the realme, and though it bee hard to discusse it: it is very necessary to be known, for the knowledge of the perfit reason of the lawe,

taue, and if any man thinke that these cases ad-
fore rehersed be grounded vpō the lawe of nat-
ure, then he may referre them to the first ground
of the lawe of Englād which is the lawe of Nat-
ure wherof is made mencion in the. 6. chap. And
if any manne thinke that they be grounded vpon
the lawe of custome, then he may referre them
to the maximes of the lawe, which be assigned for
the third groūd of the lawe of England de wherof
mencion is made in the. viii. cap as before appe-
reth.

D But I pray the shewe me by what auctority
is it proued i the lawes of Englād that the cases
that thou hast put before in the. viii. chap. & such
other which thou callest maximes ought not to
be denied, but ought to be take as maximes for
sith they can not be proued by reasō as thou a-
greest thy selfe they cā not, they may as lightly be
denied as affermed onles there be sōe sufficient
auctority to approue them.

S Many of the customes and maximes of the
lawes of Englande be knowen by the vse and
the custome of the realme so apparantlye that
it nedeth not to haue anye lawe written therof
for what nedeth it to haue anye lawe written
that the eldest sonne shall enherite hys father,
or that all the doughters shal enherite together
as one heire if there be no sonne, or that the hus-
band shall haue the goodes & chateles of hys wife
that she hath at the time of the spousels or aff, or
that a bastard shal not enherite as heire or that exe-
cutors shal haue the disposicō of al the goodes of
theyr

they tell at outrand if there bee no executours that the Ordinarye shall have it, and the heyre shall not meddle with the goodes of hys ancestrebut after particuler customes helpe hym. The other Statutes and customes of the lawe that be not so openly knowen among the people may be knowen partlye by the lawe of reason and partely by the Bookes of the lawes of England called yeres of termes, and partly by dyuers recordes remayning in the kinges courtes and in his treasury. And specially by a boke that is called the Registre, and also by dyuers Statutes, wherin many of the sayd customes and Statutes be oft respyted, as to a diligent searcher wil euidently appeare.

¶ Of the fifth ground of the lawe of England.

The.x. Chapter.

The fifth grounde of the lawe of Englande standeth in dyuers particuler customes vsed in dyuers countreyes, townes, Cities, and lordshippes in thys realme, the whiche particuler customes, because they bee not agaynste the lawe of reason nor the lawe of god, though they be agaynst the sayd generall customes or Statutes of the lawe: yet neuertheles they stand in effect and be taken for lawe: but if it yse in question in the kinges courtes, whether there bee any such particuler customes or not, it shalbe tryed by.xii men, and not by the Iudges, except the same

...selues particuler custome be of record in the same
...ourte. Of which particuler customes, I haue
...rother noted some for an exaumple.
...First there is a custome in Kent that is called
...ulkynd, that all the brethren shal inherite to
...ether, as sisters at the common lawe.
...Also, there is another particuler custome,
...at is called burghemith, where the yonger sone
...al inherite before the eldest, and that custome
...in Nottingham.
...Also there is a custome in the Citie of Lon-
...on that free men there, may by theyr testament
...deuised bequeth theyr landes that they be cer-
...ain of, to whome they will except to mortmayne
...nd if they be Citezens and freemen, then they
...ay also bequeath theyr landes to mortmayne.
...Also in Ganelkind though the father be han-
...ed the sonne shall inherite. For theyr custome
..., the father to the bought, the sonne to the
...ough.
...Also in some countreyes the wyfe shall haue
...e halfe of the husbandes landes in the name
...f her dowry as long as she liueth sole.
...Also in some countrey the husband shal haue
...e halfe of the inheritance of hys wyfe, though
...e haue no issue by her.
...Also in some countrey an infant when he is
...f the age of xiii. yere may make a feoffement,
...nd the feoffement good. And in some countrey
...hen he can mete an elle of cloth.

Of the sixth ground of the lawe of England.

The

The.xi.Chapter.

The lyxth grounde of the lawe of England standeth in diuers statutes made by our Soueraygne lord the kyng and his progenitours and by the lordes spyrytuall & temporall & the co mons in diuers parlyamentes in such cases whe the lawe of reaſō, the lawe of godde, custome maxymes ne other groūdes of the law semed no to be sufficient to punyshe euil mē & to reward good men. And I remembre not that I haue seene any other groundes of the law of Englād but onely these that I haue before remembred Furthermore it appeareth of that I haue saye before that ofte times two or thre groūdes of th law of Englād must be ioyned together, or the the plaintife can open and declare his right, a it may appere by thys example. If a man entr in to another manres land by force, & after m keth a feoffment for maintenāce to defraude t pleintife frō his accion. In this case it appere that the saide vnlawfull entre is prohibite b the lawe of reason, but the playntife shall rec uer treble damages, that is by reason of the st tute made i the.viii. yere of kyng Hery the. vi t xx. Chapter. And that the damages shalbe gi ued by.xii. mē that is by the custōe of the realm And so in thys case three groundes of the law of Englande mayntene the playntyfes accio And so it is in diuers other cases that nee not to be remembred now, and thus I make e ende for this time, to speake any ferther of t groūdes of the law of England. D I thank

he for the great paine that thou hast taken therin, neuertheles for as much as it appereth that thou hast lawe before that the lerned men of the lawe of Englande pretende, to verify that the lawe of Englande will nothing doe, ne attempte ageinste the lawe of reason, nor the lawe of goode, I praye the aunswere me to some questions grounded vpon the lawe of England how as thou thinkest the lawe may stand with reason or consience in them.

Ma. But the case and I shall make answere therin as well as I can.

I. The first question of the Doctoure of the lawe of England and consience.

The .xii. Chap.

I haue heard saye, that if a manne that is bounde in an obligacion paye the money: but he taketh no acquitaunce or if he take one and it happeneth hym to lese it, that in that case he shall be compelled by the lawes of Englande to paye the money agayne, and howe maye it bee sayed then that, that lawe standeth wyth reason or consience, for as it is grounded vpon the lawe of reason that dettes ought of right to be payd, so it is grounded vpon the lawe of reason (as me semeth) that when they be payed that he that payde them shoulde be discharged. Ma. Fyrste thou muste vnderstande that it is not the lawe of Englande, that if a manne that is bounde in an obligacion paye the money wythoute acquitaunce

or

or if he take acquytaunce and leese it, that the
fore the lawe determineth that he ought of ri
to pay the money efftsones; for that lawe w
hold against reason and conscience, but thou
it is that there is a generall Maxime in the l
of England, that in an accion of dette sued
an obligacion, the defendant shall not pleade t
he oweth not the money, ne can in no wyse
charge hymselfe in that accion, but he haue
quitaunce or some other writyng sufficiente
the lawe or some other thyng lyke, wherby
that he hath payde the money, and that is ord
ned by the lawe to auoyde a greate inconue
ence that elles might happen to come to ma
people, that is to say: that euery man by a nu
paroll and by a bare auerment shoulde auoy
an obligacion. Wherefore to auoyde that inco
uenience the lawe hath ordeyned that as t
defendant is chalnged by a sufficiente wrytt
that so he must be discharged by sufficiente w
ting, or by some other thyng of as hygh auct
tie as the obligacion is. And though it may
lowe thereupon, that in some particuler case
man by occasion of that generall Maxime m
be compelled to paye the money agayne that
payde before: yet neuertheiesse, no defaut
be therfore alligned in the lawe. For like as m
bers of lawe take hede to such thynges as m
oft fall, and hoose most hurt among the peop
rather then to particuler cases. So in like wy
the generall grounded of the lawe of Engla
hede more what is good for many, then what
good for one singuler person only. And becau
it shoul

t shoulde be shutte to manye, than obligacion
ould be so lightly auoyded by woorde, therfore
he lawe specially prouideth that hatte bubet
uch maner as bethee appeareth. And yet inten-
eth not nor commaundeth not, that the money
ought ought to be payde agayne, but setteth a
erall rule, which is good and necessary to all
e people, and that euery man may well hope,
thout it be through his owne default. And if
uch default happen in any persone, wherby he
without remedy at the common lawe, yet he
ay be holpen by a Sub pena, and so he may in
any other cases where conscience serueth for
m, that were to long to rehearse now.

D. But I pray thee shew me bubet what ma-
ner a manne may be holpen by conscience. And
whether he shalbe holpen in thesame sourte or
in an other.

S. Because it cannot bee well
eclared where a man shalbe holpen by consci-
nce or where not, but if be first knowen what
nscience is, therfore because it pertayneth to
bee most properlye, to treate of the nature and
alitie of conscience, therfore I pray the that
ou wilt make me some briefe declaracion of the
ature and qualitie of conscience, and then I
all aunswere to thy question as well as I can.

D. I wil with good wille doe as thou sayst,
nd to the entent that thou mayst the better vn-
erstand that I shall saye of conscience, I shall
yrste shewe thee what Hypocresis is, and then
what reason is, and then what conscience is,
nd howe these three differ among themselfe, I
hall some what touche.

What

What sinderesis is.

The xiii. Chapter.

SInderesis is a naturall power of the soule
seete in the highest parte therof mouing
and steering it to good and abhorring euil. A
therefore Sinderesis neuer sinneth nor erre
And thus sinderesis our lord put in man to t
intent that the ordre of thinges shuld be obse
ued. For after saint beside the wise mane
god ioyneth the beginning of the seconde thing
to the last of the first thinges. For angell is
a nature to vnderstand without serching of re
son, and to that nature man is ioyned by Sinde
resis, the which Sinderesis maye not perysh
ertinent ne neither in mā ne yet in dāpned soul
But nevertheles as to the vse exercise ther
of it maye be let for a time either through t
charkenes of ignorance or for vndiscrete delec
tation or for the harmes of obstinacye. First
the darkenes of ignorance Sinderesis may
let that it shall not murmure ageinste euel, b
cause he beleueth euel to be good, as it is in h
fertes, the whiche when they dye for the wo
hedden of theyr Errours beleue that they d
for the very truthe of the faythe. And by vnd
crete delectation, Sinderesis is sometyme
other layd that remorce or grudge of conscien
for the time rāhaue no place. For the hardne
of obstinate Sinderesis is also let that it ma
not sturre to goodnesse as it is in dampn
soule

soules that be so obstinate in euell that they maye neuer be enclined to goode. And though synderesis maye be sayde to that poynte extincte in dampned soules, yet is maye not be sayde that it is sullye extincte to all intentes. For they alwaye murmure againste the euill of the payne that they suffer for sinne. And so it maye not be sayde that it is tuiuersallye, and to all intentes, and to all ymes extincte, and thys synderesis is the beginning of all thinges that maye be learned by speculacyon or studye and mynistreth the generall groundes and principles thereof. And also of all thinges that are to be done by mans an example of such thynges as maye be learned by speculatiō appeareth thus synderesis sayth that euery holye thing is moste then maye one part of the same thinge, and that is a sure groundе that neuer fayleth. And an example of thinges that are to be doone, or not to be done as wher synderesis sayth no euill is to be done, but that goodnes is to be doone and followed, and euell to be fledde and such other. And therfore synderesis is called by some men, the lampe of reason, for it mynistreth the principles of the lampe of reason, the whyche be in euery man by nature in that he is a reasonable creature.

synderesis

¶ Of reason.

The .xiiii. Chaptre.

When the firſt man Adam was cre
he receiued of God a double eye, th
is to ſay, an outward eye, whereby
might ſee viſible thinges, and knowe his fo
by enemies and eſchewe them. And an inward
eye, that is the eye of the reaſō, whereby he mig
ſee hys ſpiritual enemies that fighteth agayn
his ſoule and beware of them. Of all amonge
gyftes that god gaue to man, thys gyft of reaſ
is the moſt nobleſt, for therby man preferreth
beaſtes, and is made like to the dignitie of a
gelles, diſcerning trouth from falſhed, and ev
from good. wherefore he goeth farre from t
effect that he was made to when he taketh
hede to the trouth, or when he preferreth e
before good. And therfore after Doctours de
ſon is the ꝑpoſer of the ſoule, that diſcerneth
twene good and euill, and betwene good a
better comparynge the other: the whiche al
eſcheweth hertues, loueth good, and fleeth bye
And reaſon is called righteous and good, for
is conformable to the wille of God, and that
the firſt thyng, and the firſt rule that al thing
muſt be ruled by, reaſon that is not righte
nor ſtraught: but that is ſayd culpable, is eyth
becauſe she is deceiued with an errour th
might be ouerrone, or elles through her p
or ſlothfulnes ſhe enquireth not for knowled
of the trouth that oughte to bee enquired. A
reaſō is deuyded in two parties, that is to ſa
into the higher part and into the lower part
The higher part hedeth heauenlye thinges a
eternall, and reaſoneth by heauenlye lawes
by h

¶ Of conficience. The.xb. Chapter.

¶ Now woorde conficience, which in Latin is
called Conficientia is compounde of this pre-
fection cum, that is to say in English, with and
of this noune sciencia, that is to saye in Eng-
lish knowlege: and so conficience is as much to
say as knowinge of one thing with another thing
conficience so taken is nothing els, but an ap-

my conscience
my vnderstan
ding. my k
nowledge & g
oodwill. my
reason

ignorance of any science or knowledge in some part
ticular acte of mā. And so obiectes may sometime
erre & sometime not erre. And of obiectes thus ta
ken, doctours of makes many distinctions: whether
one saieth that conscience is the lawe of
our vnderstanding. Another that conscience is
an habite of the mynde belonging both vnto good
and euill. Another that conscience is the iudge
ment of reason, iudging on the particuler actes
of man, all which sayinges agree in one effect,
is to say that conscience is an actuall applying of
any thinge or knowledge to such thynges as be
done. Hereupon it followeth that vpon the most
perfit knowledge of any lawe or cunninge, and
the most perfit and most true applying of the same
to any particuler acte of man, followeth the most
perfit, the most pure, and the most best conscience.
And if there be default in knowinge of the true
of such a lawe, or in the applying of the same to
particuler act, than therupon followeth an erro
or default in conscience, as it may appere by this
example. Sinderesis monistreth a generall prin
ciple that neuer erreth, that is to say, that an vn
lawfull thig is not to be done. And than it might
be take by some man that euery othis lawfull
because our lord saith, Mat.v. ye shall in no
wise swere. And yet he that by reason of the lawe
knowes will hold that it is not lawfull in no case
to swere erreth in conscience for he hath not the
perfit knowlage & vnderstāding of the trouth of
the said gospel, nor he reduceth not the saying of
scripture, to other scriptures in which it is grau
In some case an oth may be lawfull, the cause

why

Conscience guided

What is equitie. The viii. Chapter.

Equitie is a right iudgement that correcteth all the particuler circumstances of the deede, the whiche also is tempered with the swetenesse of mercie. And suche an equitie must a iudge haue in euery laue of man, and in euery generalitie that must be vsed, that both there cannot seme to be made any vniuersalitie: for that whiche in one case is generall, in another case is not generall, but hath many exceptions. And therefore it is good for a iudge to be merciful, and to haue pitie of the infirmitie of man, and to iudge him not after the rigour of the lawe, but after the equitie of the lawe. For the lawe is made for man, and not man for the lawe. And therefore it is written in the lawe of God, Thou shalt not take away the garment of the poore man for his debte, because he hath nothing to couer him withall, and he will crie vnto me, and I will heare him, for I am mercifull. Thou shalt not take away the widowes rayment to pledge, but remember that thou wast a bondman in Egypt, and the Lord thy God redeemed thee from thence. Therefore I commaund thee to do this thing. Thou shalt not gather the gleanings of thine haruest, but shalt leaue them for the poore and for the straunger. Thou shalt not gather the grapes of thy vineyarde, but shalt leaue them for the poore and for the straunger. Remember that thou wast a bondman in the land of Egypt, therefore I commaund thee to do this thing. Thou shalt not turne away the eyes from the poore, but shalt haue pitie vpon them. Thou shalt not oppresse the straunger, for ye know the heart of a straunger, because ye were straungers in the land of Egypt. Thou shalt not oppresse the widowe nor the fatherlesse, for if thou oppresse them, and they crie vnto me, I will surely heare their crie, and my wrath shall be kindled, and I will kill you with the sworde, and your wiues shall be widowes, and your children fatherlesse. If thou lende money to any of my people that is poore by thee, thou shalt not be to him as a taskemaster, neither shall ye lay vpon him any vsurie. If thou take thy neighbours garment to pledge, thou shalt deliuer it vnto him before the going downe of the sunne: for that is his couering only, it is his garment for his skinne, wherein shall he sleepe? and it shall come to passe when he crieth vnto me, that I will heare him, for I am mercifull. Thou shalt not reuile the gods, nor curse the ruler of thy people. Thou shalt not prolong to offer the first of thy ripe fruites, and of thy liquor: the firstborne of thy sonnes shalt thou giue vnto me. Likewise shalt thou do with thine oxen, and with thy sheepe: seuen dayes it shall be with his dam, the eight day thou shalt giue it me. And ye shall be holy men vnto me: therefore ye shall not eate any flesh that is torne of beastes in the fielde, but shall cast it to dogges. Thou shalt not receiue a false tale, neither shalt thou put thine hande with the wicked, to be an vnrighteous witnesse. Thou shalt not follow a multitude to do euill, neither shalt thou speake in a cause to decline after many to wrest iudgement. Neither shalt thou countenance a poore man in his cause. If thou meete thine enemies oxe or his asse going astraye, thou shalt bring it backe to him againe. If thou see the asse of him that hateth thee lie vnder his burden, and forbeare to helpe him, thou shalt surely helpe with him. Thou shalt not wrest the iudgement of thy poore in his cause. Keepe thee from a false matter, and the innocent and righteous slay thou not: for I will not iustifie the wicked. And thou shalt take no gifte: for the gifte blindeth the wise, and peruerteth the words of the righteous. Also thou shalt not oppresse a straunger: for ye know the heart of a straunger, seeing ye were straungers in the land of Egypt. And sixe yeares thou shalt sowe thy land, and gather in the fruites thereof: but the seuenth yeare thou shalt let it rest and lie still, that the poore of thy people may eate: and what they leaue, the beastes of the fielde may eate. In like maner thou shalt do with thy vineyarde, and with thine oliue yarde. Sixe dayes thou shalt do thy worke, and the seuenth day thou shalt rest, that thine oxe and thine asse may rest, and the sonne of thine handmaide, and the straunger may be refreshed. And in all things that I haue said vnto you, take heede: and make no mention of the name of other gods, neither let it be heard out of thy mouth. Three times in the yeare thou shalt keepe a feaste vnto me. The feaste of vnleauened bread shalt thou keepe: seuen dayes shalt thou eate vnleauened bread, as I commaunded thee, in the time appointed of the moneth Abib: for in it thou camest out of Egypt: and none shall appeare before me empty. And the feaste of haruest, the firstfruites of thy labours, which thou hast sowen in the fielde: and the feaste of ingathering in the ende of the yeare, when thou hast gathered in thy labours out of the fielde. Three times in the yeare shall all thy men children appeare before the Lord God. Thou shalt not offer the bloude of my sacrifice with leauened bread, neither shall the fat of my feaste remaine vntill the morning. The firstfruites of thy ground shalt thou bring into the house of the Lord thy God. Thou shalt not seethe a kidde in his mothers milke. Behold, I sende an Angell before thee, to keepe thee in the way, and to bring thee into the place which I haue prepared. Beware of him, and obey his voice, prouoke him not: for he will not pardon your offences: for my name is in him. But if thou shalt indeede obey his voice, and do all that I speake, then I will be an enemie vnto thine enemies, and will afflict them that afflict thee. For mine Angell shall go before thee, and bring thee in vnto the Amorites, and Hittites, and Perizites, and Canaanites, Hiuites, and Iebusites, whom I will destroy. Thou shalt not bowe downe to their gods, nor serue them, nor do after their workes: but shalt vtterly ouerthrowe them, and breake their images in pieces. And ye shall serue the Lord your God, and he shall blesse thy bread and thy water, and I will take sickenesse away from the middes of thee. There shall nothing cast their young, nor be barren in thy land: and I will fulfill the number of thy dayes. I will send my feare before thee, and will destroy all the people to whom thou shalt come, and will make all thine enemies turne their backes vnto thee. And I will send hornets before thee, which shall driue out the Hiuites, Canaanites, and Hittites from before thee. I will not driue them out from before thee in one yeare, lest the land become desolate, and the beastes of the fielde multiplie against thee. By little and little I will driue them out from before thee, vntill thou be increased, and possesse the land. And I will set thy bounds from the red sea vnto the sea of the Philistims, and from the desert vnto the riuer: for I will deliuer the inhabitants of the land into your hands, and thou shalt driue them out before thee. Thou shalt make no couenant with them nor with their gods. They shall not dwell in thy land, lest they cause thee to sinne against me: for if thou serue their gods, it will be a snare vnto thee. Thus farre Moyses.

for y^e right mine of y^e law is plaine reason.

that he could obserue that in the olde lawe diuide
the lawe of god and the lawe of reason. And yf
make a bette that he wyll neuer eate wylde mete
and after it happeneth hym to eate there of
he can geue none other cause, but that
hym to breake his promyse. For that
not to excepte secretly from hys generall
holde by this equitie or epikay, as is before
fore. Also if a lawe were made in a cyte
that the payne of death should open the
the cite before the sonne rysing yet if the
before that houre flying from theyr enemies
to the gates of the cite, and one for stoping
the gate vpon the gates before the houre
appointed by the lawe yet he offendeth not
he shall not except from the said generall
as is sayd before: so it appeareth that
reason betweyxt the intention of the
the wordes of the lawe. And I suppose
be of this wyse: Some the statutes
general rules of the lawe of the realme
reason, without any iudge. There is a
distinction in the lawes of England, that
that may be demaunded to no man to enter into
custody of another without auctorite of the
any of the lawe hath yet it is excepted from
lawe prohibition by the lawe of reason that
against hym by the high wayes and the beastes
hym to escape into the corne of his neighbour. And
to drawe out his beastes that they should do no
hurt doth into the ground secretly out the beastes
there he shall iustifie that enter into the ground by
the lawe. Also notwithstanding the statute

of [illegible] the [illegible] made the [illegible] graue of [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]

for

fyence to the hait profited. And yet neuertheles it cannot be layd in that cafe, that the tenãt is in goyall conficence, for the lawe neither wyll nor commaundeth that one fhould take at the profites of him that geueth it to them: conficence. So that no peril fhall can be found in the lawe, but in him that taketh al the profites to himfelf may be alleged peril: which is bound in conficence to reftoune it by wyll lawe bys foule, though he cannot be compelled therto by the lawe. And therfore in this cafe and other like, that opinion fodgeth fome haue, that they may do with conficence all that they fhall not be punifhed for by the lawe of they do it, is to be left for conficence, but the lawe is not to be left for conficence.

¶ Addition.

¶ Alfo many men thynke that if a man haue title that another hath title to, yf he that hath y right fhall not by the action that is geuen hym by the lawe to reconer hys right by: recouer damages, that then he that hath the land is alfo difcharged of damages in conficence, and that is a great errour in conficence, for though he cannot be compelled to yeld the damages by no manner is law, yet he is compelled therto by the lawe of reafon, & by the lawe of god, whereby we be bound to doe as we would be done to, & that we fhal not couet our neighbors good. And therfore if tenãt in taile & diffeafed & the diffeafor dyeth feafed, & then the heire in y tail bringeth a formedõ & recouereth y land, & no damages: for the lawe geueth hym no damage in that cafe: yet the tenãt by cõficẽce is bõde to yeld damages to the heire in tail for the deth

of his ancestor. Also it is said by some men, that the law must be left for conscience where the law doth not suffer a man to bring that he hath before allowed in court of record, or for that he were wrongfully excluded himself thereof for some other cause, as if the daughter that is only heyre to her father marrieth her lover with her father that is a bastard, in that case she shall not be after prevented by law, that her father is bastard, in so much that if her father take halt the land with her, there is no remedy against her by the law. And no more where as of hereditie other chaunces, which were to long to declare now. And yet the partie that may take auauntage of such an estoppel by the law is bound in conscience to forbeare that auauntage specially if he were so estopped by ignorance, and not by his owne knowledge and assent, for though the law in such cases geueth no remedy to him that is estopped, yet the law iudgeth not that the other hath right, bicause the thing that is in variaunce perswadeth them.

¶ Also it is understand that the law is to be left for conscience, where a thing is tryed and found by verdit against the trouth, for in the common law the iudgement must be geuen according as it is pleaded & tryed lyke as if it is in other lawes, that the iudgement must be geuen according to y that is pleaded and proued.

¶ Also it is understand that the law is to be left for conscience, where the cause of the law doth cease, for when the cause of the law doth cease, the law also doth cease in conscience, as appereth by this cale hereafter folowyng. ¶ Addicion.

a

A man maketh a lease for terme of life & after
a stranger both ouste, whereupon the late tenant
getteth an accion of Waste and hath iudgement to
recouer damages hauing regard to the certain
damages that he shall pelde to hym in the re-
uersion. And after he in the reuersion bringeth
an accion of waste vpon the same that the accion of waste
is therby extincted, then the tenant for terme of
life (though he may sue execucion of the sayd iudge-
ment by the law) yet he may not do it by conscience
for in conscience he may take no more then he is
hurted by the sayd treble damages, because he is not charg-
ed ouer with the treble damages to his losse.

Also it is vnderstand where a law is ground-
ed vpon a presumption, for yf the presumption be
vntrue, then the law is not to be holden in con-
science. And now I haue shewed the forme how
how that question, that is to say: where the lawe
shall be ruled after conscience. I pray the hea-
rer, whether there be not like diuersities in other
lawes, beside laws and conscience. D. yes
surely very many whereof thou hast rehersed one
before, where a thyng that is vntrue is pleaded
and proued, in which case iudgement must be gi-
uen accordyng as well in the lawe Ciuile as in
the lawe Canon. And another case is that yf
the heyre make not his inuentory, he shall hold
after the lawe Ciuyle to al the dettes though the
goodes amount not to so much. And the lawe Ca-
non is not against that lawe, and yet in consci-
ence the heire which in the lawes of England
is called an executor is not in that case charged to
the dets, but accordyng to the value of the goodes.

And now I pray the shew me some cases where conscience shalbe ruled after the lawe. S. I will with good will shewe the somewhat as me thinketh therin.

¶ Here followeth diuers cases where conscience is to be vsed after the lawe.

¶ The. xx. Chapter.

THe eldest sonne shal haue and enioy his father's landes at the common lawe in conscience, as he shal in the lawe. And in Burghengilde the yonger sonne shal enioy the inheritaunce and that in conscience. And in Gauelkind al the sonnes shal inherit the land together as doughters at the common lawe and that in conscience. And there can be none other cause alleged why conscience in the first case is with the eldest brother, and in the second with the yonger brother, and in the third case with all the brethren. But because the lawe of England by reason of diuers customes hath sometime geuen the lande wholly to the eldest sonne, some time to the yongest, and sometime to all.

¶ Also if a man of his meere motion make a feoffement of two acres of land, lying in two seueral fieldes, and maketh liuerey of seasin in the one acre in the name of both. In this case the feoffe hath right but only to that acre whereof liuery of seasin was made, because he hath no title by the lawe but if both acres had lene in one shire, he had had good right to both. And in these cases the diuersity of the lawe maketh the diuersitie of conscience.

Also

¶ Also if a man of his mere mocion make a lease
ment of a maner and sayth not to haue & to holde
&c. with the appurtinaunces, in that case the lesse
hath right to the demeine landes and to the tenes
if there be attournament and to the common pas-
turning to the maner, but he hath neither right to
the aduowsons appendaunt if any be, nor to the
villeins regardant, but if they terme with the ap-
purtinaunces had lene in the dede, the lesse hadde
right in conscience as well to the aduowsons &
villeins, as to the residue of the maner, but if the
lyeng of his mere mocion geue a maner with the
appurtinaunces, yet the dones hath neither right
in lawe nor conscience to the aduowsons nor vil-
leins. And the diuersitie of the lawe in these cases
maketh the diuersitie of conscience.

¶ Also if a man make a lease for terme of yeares
reseruyng to hym and to his heyres a certayn rent
vpon condicion, that if the rent be behynd by .xl.
dayes. &c. that then it shalbe lawfull to the lessour
and his heyres to reentre. And after the rent is be-
hynd the lessour asketh the rent act reseruyng to the
lawe and it is not payd, the lessour byeth his heire
entreth. In this case his entre is lawfull both in
lawe and conscience: but if the lessour had neuer
before he had demaunded the rent, and his heyre de-
maund the rent, and because it is not payd he reen-
treth, in that case his reentre is not lawfull neither
in lawe nor in conscience.

¶ Also if the tenāt in dower sow her land & dye
before her corne be ripe, the corne in conscience be-
longeth to her executors, & not to hym in the rever-
sion: but otherwise it is in cōscience of gralle and

grauntes. And the diuersitie of the lawe maketh there also the diuersitie in conueyence.

Also if a man seased of landes in his demesne as of fee, bequeathe the same by his last will to another and to his heires and dyeth. In this case the heire notwithstanding the will, hath right to the land in conueyence. And the reason is because the lawe iudgeth that will to be voyde: and as it is void in the lawe, so is it void in conueyce.

Also if a man graunt a rent for terme of life & make a lease of land to the same graunt for terme of life, and the tenant alieneth both in fee. In this case he in the reuertion hath good title to the land both in lawe and conueyence and not to the rent. And the reason is because the land by the alyenacion is forfeit by the law to him in the reuertion and not the rent.

Addicion.

Also if landes be geuen to two men and to a woman in fee, and after one of the men enterma-ryeth with the woman, and alieneth the land & dyeth. In this case the woman hath right but only to the third part, but if the man and the woman hath ben maryed together before the first feffement, then the woman notwithstanding the alyenacion of her husband should haue had right in lawe and conueyence to the one half of the lande. And so in these two cases conueyence, doth follow the lawe of the realme. Also if a man haue two sonnes, one before spousels & another after spousels, and after the father dyeth seased of certayn landes. In that case the younger sonne shall enter the landes in this realme as heyre to his father both

body & lawe of cōscience. And the cause is because
that one borne after ipontes is by the lawe of
realme the very heire, & the other sone is a bastard.
And of these cases & many other like the lawyers
of England may be formed the Silogisme of cōs-
cience, or the true iudgement of cōscience in this ma-
ner. Hidericus minystreth the maior thus. Right-
wilnes is to be done to euery man, vpō which ma-
ior the lawe of England minystreth the minor thus
The inheritaunce belongeth to the sone borne af-
ter ipontes, & not to the sonne borne before ipon-
tes. the cōscience maketh the cōclusiō, and layth
therfore the inheritaunce is in conscience to be gi-
uen to the sonne borne after ipontes. And so in
other cases like may be formed by the lawe the
Silogisme of the right iudgement of conscience.
wherfore they that be learned in the lawe of the
realme say that in euery case where any lawe is
ordeyned for the dispoticion of landes and goodes
which is not agaynst the lawe of God nor yet a-
gainst the lawe of reaso, that the lawe bindeth in the
court of cōscience
that is to say, inwardly in his soule. And there-
fore it is somewhat to mervayle that spirituall me
sone not endevored themself, in time past to haue
more knowlage of the kynges lawes the they haue
done, or that they perfor, by the ignorāce ther-
of they be oft times ignozaunt of that, that shuld
vnder them accordyng to right and iustice, as well
concernyng themself as other that come to them
for counsell. And nowe for asmuch as I haue an-
swered to thy questiōs as wel as I can: I pray the
that thou wilt shewe me thy opynyon in diuers

cales founded vpon the lawe of England wherin I am in doubte, what is to be holden therin, in conference. D. Shewe me the questions and I will lay as me thinketh therin.

¶ The first question of the student.

¶ The xvi Chapter.

IF an infant that is of the age of xx. yeare and hath reason and discrecion to gouerne himself lenyth his land & with the money therof byeth other land of greater value then the fyrst was, & taketh the profites therof, whether may that infant selle his fyrst land ageyn in conscience, as he may by the lawe. D. What thynkest thou in that question. S. Me seemeth that forasmuch as the lawe of England in this article is grounded vpon a presumpcion, that is to say that infantes commonly atteyn they be of the age of xxi. yeares to ne able to gouerne themself, that yet for as much as that presumpcion fayleth in this infant that he may not in this case with conscience alle the land ageyn that he hath sold, to his great disauauntage as before appereth. D. Is not this sale of the infant and the fetfement made therupon of any wor hondable in the lawe. S. yea verily. D. And if the selle haue no right by the bargayn, nor by the fetfement made therupon wherby he may be then haue right therto as thou thinkest. S. By conscience as me thinketh for the reason that I haue made before. D. And vpon what lawe should that conscience be grounded

grounded that thou speakest of, for it can not be grounded by the lawe of the realme, as thou hast thy self. And me thynketh that it can not be grounded vpon the lawe of god, nor vpō the lawe of reason: for fellementes nor contractes be not grounded vpon neyther of the lawes, but vpon the lawe of man. ℟. After the lawe of propriete was ordained, the people might not conueniently lyue together without contractes, and therfore it seemeth that contractes be grounded vpō the lawe of reason, or at least vpon the lawe that is called Jus gentium. ℣. Although contractes be grounded vpon that lawe that is called Jus gentium, because they be so necessarye and so generall among all people, yet that proueth not that contractes be grounded vpon the lawe of reason: for though that lawe called Jus gentium be much necessary for the people yet it may be chaunged. And therfore if it were ordayned by statute that there should be no sale of land, ne no contract of goodes. And if any were that it should be voyd, so that every man should continewe styl seased of his landes and possessed of his goodes, the statute were good. And then yf a man against that statute sold his land for a summe of money, yet the seller might lawfully retayne his lande according to the statute. And then he were bound to no more but to repay the money that he receyued, with reasonable expenses in that behalfe, and so in this wyse me thynketh that in thys case the vnwyse may with good conscyence reenter into his owne lande, because the contract after the maner of the lawe of the realme is voyde, for as

Magna multo de
tant Brit, rom
Statutis.

as I haue heard the maximes of the lawe be
great strength in the lawe as statutes. And
therbeth that in this case the infant is boun
no more, but only to repay the money to hym
he sold his land vnto, with such reasonable c
and charges as he hath sustayned by reason o
same. But if a man sel his land by a sufficient
lawfull contract though there lacketh inue
reason of such other solemnities of the lawe,
the seller is bound in conscience to perfo
the contract, but in this case the contract is
sufficient, so me thinketh great diuersitie ber
the cases. M. For this cause I hold me c
tented with thy opinion.

attingit

The seconde question of the studente.

The xvii. Chapter.

IF a man that hath landes for terme of lyf
impanelled vpon an inquest, and therupo
setly pleas and byeth, whether may those pl
leuied vpon hym in the reuersion in conscienc
they may it by the lawe. M. If they may b
ried by the lawe, what is the cause why thou d
doubt whether they may be leuied by conscy
M. For there is a maxime in the lawes of E
land, that where two titles runne together,
eldest title shalbe preferred. And in this case
title of hym in the reuersion is before the tit
the forfeiture of the pleas. And therfore I d
somewhat whether they may be lawfully le

By that reason it semeth thou art in doubt
that the law is in this case, but that must neces-
sarily be knowen, for it is to vayn to argue
of conscyence wyll therin. D. It is cer-
tayn that the law is suche and so it is vsed, wyfe
husband forfeit yllues and dye, tho yllues that
growed on the landes of the wyfe. D. And if
the law be such as semeth that conscyence is so
to the wyfe, for sith it is the law that for execu-
tion of Justice euery man shalbe vnpanelled who
so requireth it semeth reasonable, that if he will
not appere that he should haue some punishment.
for not appearaunce: for els the law should be
vterly frustrate in that point. And the pain as I
haue heard is that he shal lese yllues to the kyng
for his not appearance, wherfore it semeth not in-
conuenient nor against cõscience though the law
that tho yllues shall be leuyed of hym in the re-
turn, for that condition was secretely vnder-
stode in the law to paie with the lese what the
lese was made. And therfore it is for the lessour
to beware & to prouide the danger at the makyng
of the lese, or els it shall be iudged his own de-
fault. And than this particuler maxime whether
yllues shalbe leuied vpon hym in the reuersiõ
by particuler exceptiõ in the law of England
to the general maxime that thou hast remembred
before, that is to say, that where two titles runne toge-
ther, that the eldest title shalbe preferred. & so in that
case the general maxime in this point shall hold
place, nother in law nor in cõscience, for by this
particuler maxime the strength of the general max-
ime is restrained to euery intent, that is to say, as
well in law as in cõscience. The

note pur
Furiuus om
anselm

false al lay
of

¶ The third question of the student.

¶ The .xviii. Chapter.

If a tenāt for terme of life, or for terme of yeres do waste wherby they be bound by the lawe to yelde to him in the reuersion treble damages, he shall also forfet the place wasted, whether he is also bound in conscyence to pay the damages and to reflore the place wasted immediatly after the waste done, as he is in the single damages, or is not bound therto tyl the treble damages and place wasted be recouered in the lynages court. D. Before iudgement geuen of the treble damages and of the place wasted he is not bounde in conscyence to pay them. For it is vncertain whether he would pay, but it sufficieth that he be readye when iudgement be geuen to yelde damages according to the value of the waste, but after the iudgement geuen, he is bounde in conscyence to yelde the treble damages, and also the place wasted. And the same lawe is of all statutes penal that is to say, that a man is bound in conscyence to pay the penalties that may be recouered by the law. D. whether he that hath offended against such a statute may defende the accion and hinder the iudgement by entent he would not pay the penaltie, but only the single damages. D. If the accion be prosecuted accordyng to the statute and there is no iuft cause the defendaunt may in no wyse defende the accion, onles he haue a true dylatory matter to pleade: which thoughe he hurtfully denye yet he pleaded it not, thoughe he be not bounde

not bynd de iure to penalties against prouse

pay the penalty yf it be recouered

¶ The fourth question of the student.

¶ The xxiiii. Chapter.

If a man infeffe other in certayn lande vpon condicion that if he infeffe any other: that is the lawfull for the feffour and his heyres to re[-]. whether is this condicion good in conci[-]ence though it be voyd in the lawe. D. In[-]deed the cause is why this condicion is voyd in the lawe

The cause is this by the lawe it is incident euery state of fee symple, that he that hath the[-]e may lawfully by the lawe and by the gyft of the feffour make a feffement therof. and the wyll of the feffour restrayneth him after that he shal make feffement to no man agaynst his owne former feffement, and also agaynst the purtie of the state of fee symple, the lawe iudgeth the condicion to be voyd, but yf the condicion hadde been that he shulde not haue infeffed such a man, or such a mā the condicion hadde been good, for yet he myghte haue done other.

Though the layde condicyon be agaynst the effect of the state of a fee symple and also a[-]gaynst the lawe. Neuerthelesse it is not agaynst reason that the parties agreed vpon and that is good of the mercy. And for as much as the default of the party semeth that yf the feffee in fee of any man of the lande, that the feffour shoulde haue and to take them, the feffee loue the state and after

myght haue also
myght lawfully not
Deed. For
condicion
myght

other breake the intent it seweth that the land
conference should returne to the feffour.
The intent of the parties in the lawes of E
land is boyd in many cases, that is to say if
not ordred according to the law. As yf a ma
his mere mocion without any recompence
dying to geue landes to another and to his he
make a dede vnto hym, wherby he geueth hi
landes to haue and to hold to hym for ever
ving that by that word (for ever) the feffe
haue the land to him and to his heyres, in thi
his intent ys boyde, and the other shall have
land only for terme of life. Also if a man geue
to another and to his heyres for terme of, &c.
intending that if the feffee dye within the te
that than his heires should inioy the land du
the terme. In this case his intent is boyd, fo
the law of the realme al chatels reall and p
nal shal go to the executours, and not to the
Also if a man geue landes to a man and to
wife, and to the thyrd parson intending th
mery of the thould take the thyrd part of the
as fine cōnō parsons should his intēt is boy
the husbād & the wife as one person in y law
take only the one half & the thyrd perso the
half, but these cases be alwaye to be vnder
where the sayd estates be made without a
compence. And for as much as in thes
cipall case, the intent of the feoffour is gr
against the lawe: and that there is no re
pence appointed for the feffement me th
that the feffour hath neither right to the la
law may coūcider, for yf he should have it by

that conscience ought to be grounded upon the
of reason and that it can not lye consciona
grounded upon the laws of reason, but upo
statutes and customes of the realm. And ther
it might be ordeyned by statute, that all con-
mens made upon land should be boyd. And so shal
unction to be boyd by the maximes of the laws,
as fully boyd to every intent as if it were
boyd by statute, and so me thynketh that in
case the suffolk hath no right to the land in
not in conscyence. D. I am content thy
ion stand till we shal haue hereafter a better
to speake further in this matter.

A statute ag
ainst al pro
uysions wor
Land, thy
for Work

The fifth question of the student.

The xxvi. Chapter.

a fyne with proclamacion be leuyed accord
ng to the statute and no claime made with-
e yeares. &c. whether is the right of a strat-
tincted therby in conscyence as it is in the
D. Upon what consideracion was
statute made. S. That the right of
and reuenewes might be the more cer-
knowen and not to be so uncertain as the
forge that statute. D. And when any
man is made for a common welth, or for
peace & quietnes of the people, as for any
nience or hurt to be saued from them, that
is good though per case it extende the peple
stranger and must be kept in the course of
conscience

conſcyence for as it is ſayde before in the
Chapter. Any lawes ryghtly applyed made by
apperetly wyse bethe ryghtes & g
for whatſoeuer a man hath by ſuch a law be
is ryghtfully. And whatſoeuer he holdeth
gaynſt ſuch a lawe he holdeth wrongfully.
furthermore as it is ſayde there, all lawes
by man whiche be not contrary to the lawe of
muſt be obſerued and kept, and that in conſc
And he that diſpyſeth them, diſpyſeth
and he that reſiſteth them, reſiſteth God,
ſo it is to be vnderſtande that poſſeſſions, and
ryghtes therof be ſubiect to the lawes, ſo that
therfore with a cauſe reaſonable may be tra
ted and altered from one manne to another
the acte of the lawe. And of thys conſyderac
that lawe is grounded that by a contract ma
fayres and marketes, the properte is altere
cept the properte be to the kyng, ſo that th
et pay tolle, or do ſuch other thynges as is
ſtouned there to be doone vpon ſuch contra
and that the byer knoweth not the former
pietye. And in the lawe of tuile there is a
lawe that yf a man haue another mannes
with a tytle. iii. yeare thynking that he hath
to it he hath the very right vnto the thynge
was made for a lawe to the entent y the p
and ryghtes of thinges ſhould not be vncertai
that variaunce and ſtrife ſhould not be amo
people. And forasmuch as the layde ſtatute
ordeyned to gyue a certainty of tytle in the
and hereditamentes comprehed in the ſame. Be
thes fyue yeres eyther y tytle of al other, as
conſcy

[illegible] answered to the question. I purge the law me [illegible] question concerning [illegible] [illegible] I will proceede the notwithstanding [illegible] [illegible] question made by the Doctour, holde [illegible] [illegible] reasons that be [illegible] [illegible] reputes to [illegible] [illegible] [illegible]

he shall take defaute vpon which defaute he
maie seise it is a defaute in deede of the tenant
the demaundaunte shall haue iudgement to
recouer against the tenaunte in tayle, and he
in deme against the vouche and this iudgement
& recouerie in value, is taken for a barre of the
taile for euer, howe maye it therefore be take
that iudgement & recouerie, that as it streng
alweth & fauoureth such feynede recouerie.

D. If the tenaunt in tayle sell the lande for
a certaine some of money as is agreed betwixte
the at such a price as is commonly vsed of other
landes, & for the suertye of the sale inforceth such
a recouerye as is afore saide, what is the cause
that moueth the to doubte whether such coue
on the recouery maye thereupon for the suertye
of the byer that hath truly paide his money for
the same should stande with conscience,

M. Two thinges cause me to doubte therein
one is for that, that after our lord had geue the
land of behest to Abraham & to his seede, that is
say to his children in possession alwaye to endure
hee saide to Moyses as it appeareth Exodi.
32. the lande shall not be solde for euer, for it
is myne. And when our Lorde assigned a cer
tayne maner howe the land might bee redeemed
in the yere of Jubilye it were solde hee saide
and for as muche as our Lorde woulde that
the lande so geuen to Abraham and his chil
dren should not be solde for euer it seemeth that
he doth against the ordinaunce of god that alie
nateth or selleth the lande that is geuen to bring vp to
his children as landes intayled be geuen.

And not

Neither can it stand, it appeareth by the commaundement of god that thou shalt not couet the house of thy neighbour &c.

And of this concupiscence he prohibited, none other the vniuersall taking and withholding thereof in couenant, and for as muche as euerie mans lot, inheritance, is dead as a thinge that of right is belonging to gods people, for that lot is kepte according to the tribe, howe may that land with right or conscience bee holden from you.

Notwithstanding that prohibicion of alienating Gedde; whereby the lande that was graunted Abraham and to his seede might not be alienede for euer, yet landes within walled townes might lawefully be alienede for euer, except the landes of the Leuites as it appeareth in the laste Chapture of Leuitici. xxv. And so it appeareth, that the laste prohibicion was not generall for euerye place and that amonge the Iewes. And it appeareth also that it was geuen vnto for Abraham and his children, and so it was not generall to all people. And it appeareth also that it extended not but onelye to the lande of promision as it appeareth by the wordes of the laste Chapture, where it is saide thus, In the region of your possession shalbe found buyers the condicion of redeming, whereby appeareth that landes in other countries bee not bounde to that condicion, and as they bee not bounde to that condicion by the same reason it followeth that they be not bound to the laste succession. Therefore the Iewes have that still that the lande graunted Abraham & to his seede shal not be sold for euer

D. Yf thou thinke that if a wyfe or
mayde commyt a fraute petyt that he offendeth
in no offence aboute that he haue it not for it
is not to be beleue for that he doth not obeye
the lawe & fayth he doth it of ygnorance &
lacke of vnderstandyng. D. It is lyke but yet
is a fraute that is called Domyture it longeth
not to euydence to the punyment of the peryl
but it shall be recouered by the lawe. A. It
is not lyke in euydence, but it is lyke
vnder correccion, to loke the lawe of
the realme, and for that fraute is moche a peril
to the partie in that case the ordynaryes of
the dyocesse haue commaundyng to take
the knowlege to the lawe of the lande and
ouer the statute of lande but the partie is
moche hurte he is not bounde to gyue ful
credence, but geuen as it is lyke, for
frautes by the whiche it is apparent more
full hane regard or reguarde to the lawe
and punyshed, as the fraute of perell &
it hen not, agenste the lawe of god more
agenste the lawe of realme hane all thynges
in reuerence to the lawe: in lyke wyse as
with fyche a fraute is the statute of wrytyng
for the ecclesiastycal men haue treated before.
[illegible] in cases
[illegible] that some hath that the statute of
[illegible] the seconde was made of a fraudulente
[illegible] confyrmacion of many that were of the
[illegible] punnyshyng & puttyng a mayntein of their goyng
[illegible] a tyme for then sayd that fraute made

note
[illegible]
[illegible]

be obserued by all them that be subiectes vnto
your lawe. For as Iohan Gerson saith in the trea-
tise that he maketh of this matter. De vita spirituali a-
nimæ lectio septima. There ca[illegible] [illegible]
[illegible] [illegible] [illegible] [

Divorce
see also
Chap VI
p 13 of
the Romans
right w
are for a
Divorce.

because that the continuance of that cus-
gainst the lawe was partly an occasion in the
gle for that that they would not obey to the
that was made by them superiours to the
trarye of that custome: but it is to be know
that the sayd recouries though they have
longe vsed may not be called to have the stre
of a custome, for many statutes termed as
ued have alwaie spoken agaynste them
ing. And furthermore as I have heard
custome or a prescripcion in this realme
the statutes of the realme ymade not in the
D. Though a custome in this realme
not againste a statute as to the lawe, yet it
if it may preuaile againste the statute in
for though ignorance of a statute excuse
in the lawe, nevertheless it maye excuse
thence: so it semeth that it may do of a cus
D. What if suche recouries cā not be
unto a lawefull custome in the lawe, it se
they may not be brought in to a custome in
fficace for efficace muste alwaye be grou
the lawe: and in this case it can not be grou
vpon the lawe of reason, nor vpon the
of godde: and therefore if the lawe of
serue not, there is no grounde where
confidence in this case maye be grounded,
at the beginning of suche recouries they
taken to be good because the lawe shoulde
rant them to be good and not by reason of
custome and so if the reason of the lawe
may serue in the recouryes, the custome
not helpe for any euyll custome is to bee

The .xxvii. Chapitre.

Yf a villayn make a gyft in the tayle to Johan of Style and Johan of Style for the recouerye of his title agreeth with the lord vpon that he shall haue a certayne rent out of the same lande to him and to his heyres, and for the surety of that rente it is couenaūted that the lord shall haue his ryght in the lande, &c. and that suche a recouery against hym haue spoken of before shall be had against the sayde Johan of Style to the vse of the paymente of the sayde rent and of the forfeyture of the sayde rent and of the forfeyture tayle whether standeth that recouery with good conscience or not as thou thynkeste. D. I suppose it doth for it is made for the surety and suretye of the tayle. Which the lorde might haue clearely defeated and auoyded yf he would and therfore as I thynke yf the sayde Johan after hande graunted to the lorde only by hys dede a certayne rent for the assurance of his title that graunt shulde haue bounde the heyres in the tayle for euer. And then yf the lorde for his more suretie wolde haue suche a recouerye as before appeareth it semeth that recouerye standeth with good conscience.

It semeth that thy opinion is right good in this matter. And so it appeareth that with a reasonable cautele many particuler recoueries may stande both with lawe and conscience to barre a tayle.

The second question of the student concerning tayled landes.

The xxvii. Chapter.

A tenant in tayle suffre a recouery against
him of the landes entailed to the intent that
the recouerer shall stand seased thereof to the vse
of a certaine woman whom he entendeth to take
to hys wife, for terme of her life, and after to the
vse of the first tayle and after he marieth the
woman, whether standeth that recouery by
conscience though other recouerers had bargaine
and sayles dyd not?

Dr. It semeth yea, for though the statute be,
that they to whom the tenementes helo geuen,
should not haue power to alene, but that the lãdes
after their death should remain to their issues of
tayle to the donours of the same fayled yet if he
to whom the landes were so geuen take a wife,
death seased without heire of his body, and the re-
mour enter the woman shal recouer against him
the third part to held in the name of her dowar
for terme of her life, though the tayle be determined
and the same law is of tenant by the curtesye that
is to say of him that happeneth to marye a wife that
is an inheritrix of the land entayled, & they haue
yssue the wife dyeth, and the yssue dyeth, he shall
hold the landes for terme of his life as tenaunt
by the curtesye, notwithstanding the wordes
of that statute which saie that after the death
of the tenaunt in tayle without issue the landes
shall reuert to the donour, and I thinke the cause
is because the intent of that statute shall not be
taken that it intended to put away such titles as
the law should geue by reason of the tayle, and
so it semeth that a like entent of the statute
shall be taken for ioynt ours, for elles the statute

suche be lawfull a lyuerey of maintenaunce and this not withstandyng the statute mencioned in the .xxv. yere of kyng Edward the .iij. for the whiche cause by this statute made of the tenant in talle a tayle ouer may be made, by the intente of the statute, though the wordes of the statute serue not expresly for it. For in the wordes specyfyenge of the letter is also taken and not the bare letter, as it appeareth in the same statute where it is sayde that he to whom the landes be geuen shall haue no power to alien. yet the same statute is construed that neither he nor his heires of his body shall haue no power to alien, and so me thinketh that such an intent shalbe take here for lyuing of tayle tayle.

Fourthly it is true, sometime the intente of a statute shalbe taken further then the expresse letter stretcheth, but yet there may no intente be made against the expresse wordes of the statute, for that should be rather an interpretacion of the statute than an exposicion and it cannot be reasonably take, but if the intente of the makers of the statute were, if the lad should remayne of equall degrees of the exile as long as the talle endureth, there can no fourtop be made neither he nere not by remayne, but that the talle must ouerlyue & dureth with a fourtop. This case of fourtop is not like to the said cases of tenat in power of tenant by the curtesie, for the title of dower and of tenaunce by the courtesie proueth not effectually by the continuaunce of the possession in the heires of the tayle but it is more of fourtopes, and therfore by the same reason of the tenat in tail there may no fourtop be lawfully made against the expresse wordes

Int. Fol. 20 oppo. wor.

The xlix. Chapter.

beleue in dede that should come after hym but for
himself me thinketh it is reasonable to iudge
in such maner as I haue said before.

¶ And though the intent of the sayde Johan
at nobe whan he made the said feoffement, and
whan he sobe agayn the said gift in tayle were
that of the fyll in mede that he might alienate it
because that he may not alien thoughe perraduen-
ture by circumstances he declared his intent to be fut he
lyeth the maners of seasons: for that intent were
contrary to the gift that he firste tooke vpon hym
and whan any ayenant or condicion is declared or
reserued against the statute that any man is able to
execute than such an intent or condicion is void
by the lawe as by a case that hereafter folowyth
will appeare, that is to sayen if a man make a feoff-
ment in fee vpon condicion that the feoffe shall
not alien it to any man, that condicion is voyde
for it is repugnant to euery state of the fee simple
that he that is enfeoffed may alyen. And vnlyke
in a fee symple there is incident a power to a-
lyen, so in a state tayle there is a secrete intent
longyng vnto the gift, that no alyenacion shall
be made. wherefore though the intent of
the said Johan at nobe were that if he fell into
mercy that he might fell: though he at the time
of the gift of the maners declared his intent to be
suche that intent should be voyde by the lawe and
the statute, and if it be voyde by the lawe, it is al-
so voyde in conscience, and so the said recouery
must be taken in this case to be of the same effect as
recoueries of other landes intayled be, and in none
other manere.

G.iiii. The

¶ The fourth question of the sixteene concerning recouerees of the hereditaunce entayled.

¶ The .xxv. Chapter, reader

If an annuitie be graunted to a man & his heires to pertaine to the graunt and to the heires of the body of the sellers of his graunture: and after the graunt he sueth a recouerye against him in a writ of entre by the name of a rent in bar of the summe as the annuitie is of, both vouchers and iudgement after the common course: and both parties intend that the annuitie shall be recouered: whether shall that recouery serue the heyre in the taile of the annuitie.

D. What if it were a rent graunt out of lande what effect should the recouerye be there.

St. Double. be there of the effect as if it were of lande.

D. And so is seemeth to be of the annuitie, for as me thinketh a rent and an annuitie be of one effecte, for the one chalenge shall be made in rendy money as the other rent.

St. That is trouth but yet there is many grete differences betwixt them in the lawe. I may shew the there are some of them now.

Dare. I shall shew them, but I wold fayne here you first shew me what is the difference betwixt a rent seruice and a rent charge, for I remember I haue redde that one difference is this, that rent seruice, rent charge, or rent secke is graunted out of lande, but an annuitie goeth not out of any lande but chargeth only the person, whose dede the graunt our of his heires that haue affey by assent

Annuitie entitled) resembleth one of these but not a out of lande

the house if it be graunted here house of relyg-
ion to perceiue of their coferg. Also of an annu-
tie where hyeth no accion but only a writ of an-
uite against the graunteur his heyres or fe-
ffees and that writ of annuite lyeth nowe
not against the persone but only against the graun-
teur his heyres, but of a rent the same accion
lyeth as do of land in the case resyng thereof is
lyeth sometyme of rent against the tenant of the
and sometyme against the persone of the
that is to say against hym that taketh the
profytes corporally, and sometyme against another
as of a rent seruice also may ye se the lyeth as
against the meine and the defendour sometyme
against the meine only & not also the defendour.
Also an annuite is neuer taken for an offyce long
time it is no freehold in the law, as it shall more
be put in execucion vpon a statute marchaunt, fore
and shall be elegit as a rent may. And because that
lyeth not of entier lyf nor in this case of the
annuite and that it cannot be executed during the
life of the same annuite, though it be of like sume
as the annuite, yet though the partie entered
ought not to haue the same annuite frequently for
the more of entier, therefore the lord recouerth
in dett and damages, but of such
recouerie he hath of nyt with a bourdon cum tyde
ought nothing to be of like effect as recouerye of
lands herin such manner as ye haue trusted of the

¶ The sixth question of the statute

[illegible]

C.d. The

A writt of annuite

parmor by qui rdoha les fuit al use dauter

Herodot ere de vent, ou bourdon of boy

The xxxi. Chapter.

other

other tayle. D. I will be aduised by
against in this matter, but yet one thyng
I know further by diuerse statute and that
some say that by this statute all other
ryen that haue been had, ouer before the
ries of ioyntours be disproued, for they
the parliament at the making of this statute
well that many other recouries were
and had to defeate tayles, and that it was
they should so continue, which neuertheless
parliament dyd not prohibit for the time to
as it dyd the said recouery of ioyntours, that
therfore to suppose that they thought that
should stand with lawe and conscience,
cause ioyntours were made rather for the
of the inheritance of the husband, than to
the inheritaunce, that say that the parliament
thought and aduised the disheritaunce
ries of such ioyntours to be against the
conscience, and not the disheritaunce of other
entayled, for if they had thought that the
were should haue aduised recouerye
lawfull generally as well as dyd of recouerye
of ioyntours. D. To that opinion
answere that thus far they is true, that thoughe
disheritaunce of the said estates entayled
couries of ioyntours, and not other recouries
that yet cannot be taken therefore that they
intended what the other recouries should
good and profit, for then should follow only of
cause because these were not commune
the disheritaunce as these were, and
mischiefe of ioyntours, and therefore it seemeth

¶ The xxxii. Chapter.

¶ The fyue queſtion of the ſtatute of Gloucetter, concerning tayles ſpoken.

thereby hurted in conscience, as he is the
D. Because our principall intent
is to speake of recoueries and not of
and also because it hath bene of long time
a principall maxime of the lawe that it
a barre to the heyre as wel that claimeth
simple fee by a state tayle, and for that all
it was not put away by diuers statutes
the ii which ordayned the tayle. I wyll
this time make thee answere therin, b
rather require to be aduised.
D. Nay I pray the yet or we depart
what was the most principall cause that
the vi moue this question of recoueries
tayled landes. D. This moued me ther
haue perceiued many times that there be
many opinions of those recoueries, whether
stand with conscience or not, & that it is
that many persons renine offence of cons
therby. And therfore I thought to se
in them whether I could perceiue
cleare, that they serued to breake the taile
and conscience, or that it were clerely against
science so to breake the taile, or that it were
ter in doubt, and if it appered a matter in
or that it appeared that the matter were bled
ly against conscience, than I thought to do
what to make the matter appeare as it is
intent that they that haue the rule and the
ouer the people as wel the spirituall
temporall men, should the rather endeuour
to see it reformed for the common
the people, as well in body as in soule

...any thyng is lyke to the diseases of ...
... hurteth not only the body but also the ...
... and temporall rulers haue not only ...
... bodyes, but also of the lawes, and shall ...
... for them if that perill in them be found ...
... it seemeth by the mater apparant reason that ...
... be not broken ne fully auoyded by the ...
... enemies, & that yet nerertheles the great ...
... of them that be pesild is yll inough to ...
... Therfore it were very good to make ...
... them for tymes to come, to put away such ...
... and doubtes as ryse now by reason ...
... the lawe recouueres, and so they be but as ...
... to become the people, and so shall they ...
... long as they be suffred to continue. And ...
... verily that is very therfore right ...
... that cayled landes should from hence ...
... rather be made so strong in the law that ...
... title should not be broken by recouery, fyne ...
... proclamation collateral warrantye ne ...
... title, or els that all cayles should be made ...
... simple, so that euery man that lust to sell his ...
... right sell it by his dede fealment & with ...
... any scruple or grudge of conscience: and then ...
... should not be so great expences in the lawe nor ...
... variace amongthe people as yet is of ...
... cayles as there is now in many persons. ...
... Nerthelesse me thynketh that the opinion right ...
... charitable in them behalf. And yf the rulers ...
... bounden in conscience to take wel vpon them to se it ...
... and brought into good order. And verily ...
... thou hast said thereto thou hast brought me ...
... remembrance that there be diuers like matters ...
concerning

yet is mervaile
lie, to ought
yt no zeal or
Lords Auditors
of Outlaws
Bailes & Fall
Tailes & Fold
Mead Lyon
Che. p. Ho
much De
lift de Bayes
fur.

Addicion.

That I haue shewed vnto the in this litle Dialoge how the law of Englande is grou-ded vpon the law of reason, the lawe of godde, the generall customes of the realme, and vpon certein principles that be called maximes, vpō the particuler customes vsed in diuerse Cities and countries, & vpon statutes which haue been made in diuerse parliamētes by our soueraigne lorde the king and his progenitours, and by the lordes spirituall and temporall and all the com-mons of the realme. And I haue also shewed the in the .xx. Chap. of this booke vnder what maner the sayd general customes and maximes of the lawe may be proued and affermed if they were

Here endeth the firste Dialogue in
[illegible] and
[illegible]
[illegible]
[illegible]

D.

ge. I pray the doe as thou sayest & I shal surely
geue vnto yether make answere to the scothinly
as well as I can, or shall take longer respite to be
aduised, or els peraduenture agree to thine opinio
therin, as I shal see cause. But first I would
gladly knowe the cause why thou hast begonne
thys dialogue in the Englishe tonge, and not in
the latin tonge, as the first calles that thou de-
syrdste to knowe mine opinion be in, or in frēch
as the substaunce of the lawe is. Re. The cause
is thys. It is right necessarye to all men in thys
realme, bothe spirituall and temporall for the
good ordering of theyr conscience to knowe mat-
ter thinges of the law of England that they be
ignorant in. And though it had be more pleasaunt
to the that he lerned in the latin tōgue to haue had
it in latin rather than in Englishe, yet neuertheles
for as muche as manye can rede Englishe
that vnderstand no latin, and some that can nor
rede Englishe by hering it redde maye lerne di-
uers thinges by it that they should not haue lerned
if it were in latin. Therefore for the profite
of the multitude it is put in the Englishe tonge
rather than into the latin or frenche tonge. And
if it had ben in frēche I feare thould haue vnderstand
of fewe they that be lerned in the lawe, and they
haue le nede of it, for as much as they knowe
the lawe in the same calles without it, and can
better declare what conscience wolt therevpon
than they that knowe not the lawe nothing at
all. To them therefore that be not lerned in the
lawe of the realme this treatise is specially made
for thou knowest well by such studies thou shalt

taken to some knowledge of the lawes of the realme that is to them most expedient.
It is true that thou sayest and therefore I pray the now proceede to thy questions.

¶ The fyrste question of the Student.

The first Chapter.

If tenant in tayle aske all possibilitie of issue extinct do waste whether doth he therby offende in conscience though he be not punishable of waste by the lawe. D. Is the lawe clere that he is not punishable for the waste. S. [illegible] herein. D. And what is the lawe of tenantes in terme of lyfe or for terme of yeres if they do waste. S. They be punishable of waste by the statute and shall paye treble damages, but at the common lawe before that statute they were not punishable. D. But whether thinkest thou that before the statute they might have done waste with conscience because they were not punishable by the lawe. S. I thinke not in case I take it the doing of the waste of such tenantes for terme of lyfe, for terme of yeres or of tenantes in dower, or by the curtesy punishable by the lawe of reason, for it semeth of reason that who such lesse be made, or that such tenantes in dower or by the curtesie be punished by lawe that there is onely given unto them the annuall profites of the lande and not the inheritance and the grauel to digge and carry away, wherby the hole profite of the lande should

ſhould be take away for euer. And therfore at the cōmō law for waſt done by tenāt ſ bowet of ſuffe by the curteſy there was puniſhyng other-wiſe by the lawe by a prohibicion of waſt wherby they ſhoulde haue recouerd damages to the value of the waſt. But againſt tenāt for terme of life or for terme of yeres lay no ſuche prohibicō for there was no maryme i the lawe therin againſt the one there was againſt the other. And I thynke the cauſe was for ſaſtnyeſs as it was iudged. Forby-cauſe the leſſour that made ſuch a leaſe for terme of life or for terme of yere ſithat at that time of the leaſe he did not prohibite them that they ſhoulde not doe waſt. and ſith he did not prouide no remedy for hym ſelfe: the lawe wouldē none prouyde for yet I thynke not that the intent of the lawe was that they might lawfullye and with good conſcience doe waſt, but againſt tenauntes ſi ſo doe and by the curteſye the lawe prouided remedy for they had theyr title by the lawe.

And herein me thynketh that thyn tenant i taile as to doyng of waſt, ſhoulde be like to a tenant for terme of life, for he ſhall haue the lande no longer than for terme of his life no more than a tenant for terme of life ſhall, and the waſte of this tenant is as great hurte to hym in the reuercion or the remaynder, as is the waſt of a tenant for terme of life: and if he alyene, the donoure ſhall enter for the forfaycture as he ſhall vpon the alienacion of a tenante for terme of life and if he make defaute in a Precipe or reſpite the donoure ſhalbe receyued as he ſhalbe vpon the defaute of a tenant for terme of life

¶ therefore me thinketh he shal also be punishable of wast, as tenant for terme of life that. ID.

If he alien, the honour that ens as thou hast, because the alienacion is to hys disheritaunce, and therefore it is a forfeture of his estate: that is by an auncient maxime of the lawe that giueth that forfeiture in that seide case, ¶ if he make defaute in a plee ¶ repbat: he in the cessio, as thou hast shalbe reputed, but that is by the statute of westm. ii. for at the comō law there was no such refcet, ¶ as for the statute that getteth the accō of wast ageinst a tenant for terme of life ¶ for term of yeres it is a statute penal ¶ shal not be take by equite, and so there is no remedy by graūd ageinst him, neither by commō law nor by statute, as there is ageinst tenāt for terme of life, and therefore he is vnpunishable of wast by the lawe. ID. And thoughe he be vnpunishable of wast by the lawe: yet neuerthelesse me thinketh he may not by conscience doo that, that shalbe hurtful to the inheritance after hys time, sith he hath the lande but for terme of hys life no more than a tenant for terme of hys life maye, for than he should doe as he would not be doone to, for thou agreest thy selfe that though a tenant for terme of hys life may not punishe of wast before the statute that yet the lawe iudged not that he myghte rightfully and with good conscience do wast. And therefore at this day if a feffement be made to the vse of a man for terme of life, though there lye no accō ageinst him for waste, yet he offendeth conscience if he doe waste, as the tenant for terme of

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the, it sur
trict, pticular
state granted
possession

...lly alone the statute when he runneth ...
...ecuteth him by the same. ...
...there is great diuersite betweene the ...
...and a tenant for terme of life: for the ...
...hath good aduantage by the demaine to ...
...made, and so hath not the tenant for terme ...
...as it is farder before. For the estate of a ...
...in taile after possibilitie of issue extincte ...
...maner. Whē landes be gyuen to a māne ...
...wife & to the heires of their two bodyes ...
...coupled, and yf the one of the dieth, without ...
...es of their bodies begotte, thā he or she that ...
...liueth is called tenāt in taile after possibilitie ...
...issue extinct, because there cā neuer by no possi- ...
...bilitie be any heire that may enherite by force ...
...that gift. And thus it appereth that the doners ...
...the time of the gift: reserued of the demaine ...
...of inheritaūce, which by possibilitie might ...
...reuiued for euer, whereby they had power ...
...to put downe trees and to doo all thinge ...
...at wast, as tenāt in fee simple might, and ...
...authoritie was as stronge in the lawe as if ...
...deuise that maketh a lease for terme of life ...
...perpetuite woldes in the lease that the lesse ...
...not be punishable of wast. And therefore if ...
...honour i this case had graūted to the doners ...
...they should not be punishable of wast, that ...
...had ben voide because it was exclused in ...
...before, as it should be vpō a gifte in fee ...
...so forasmuch as by the same gift & by the ...
...of lesson made vpō the same the doners ...
...entente by the honour to do wast. Ther- ...
...fore the one of that doners be now dead ...

without

without time, so that it is certaine that
death of the other the land shall returne
honour, for the estrangle that they had
honour to bee made, & thereby as long as
& the bounty of seald make vpō the same
ther. I take this to be the reason why
not haue i abe as tenāt for terme of life
as long, for that he can not alue helpe
auaile, whereby it is obtained that a re
terme of life shall haue lapse, for he cā
but that he take a greater estate by the
of season that was made to him which per
metly thā for time of life, & so I take him
bounde to make any restitucō to hī the
cō i this case for the waste. D. As thy mind
to proue that this tenant is not bound to
restitucō to him in the reuercion for the
or that thou thinkest that he may with cle
science do all maner of waste. I intend to
no more but that he is not bound to re
to him i the reuercion. D. When I will
wel agree to thine opinion for the reason
thou hast made, but if thy mind had be
gone, he might with clere conscience
all maner of waste, I would haue thought
trary thereto, & that the tenāt in fee simple
ent doe all maner of waste and destru
with conscience, as to pull downe hou
make pastures of Townes and villages
suche other acteg whyche be agenste the
mon weithe. And therefore some
that tenante in fee symple may not,
conscience destroye his woodes and co
moysa

...erly a whole countrey for their owne ...
...ll. And yet though he doe so his is not ...
...by prescripcion to make restitucion to no ...
...n certeyn. But now I pray the ye shew ...
...e to the seconde case: that thou wilt saye ...
...he me me what thou meanest when thou ...
...h at the common lawe it was thus & that ...
...erstand not fullye what thou meanest by ...
...erme at the common lawe. &c. I shall ...
...good will shew the what I meane therby ...

...hat is ment by this terme when it is saide ...
... thus it was at the common lawe

¶ The seconde chaptre.

The common lawe is taken three maner of ...
...waye: Firste is taken as the lawe of the ...
...me of Englande discevered from all other ...
...s and bindes this maner taken. It is often ...
...argued in the lawes of Englande what ...
...ng ought of right to be determined by the ...
...law & what by the admiralles court or by ...
...ytuall court. And also if a obligacio bere date ...
...of the realme as Spayne, Fraunce, or such o- ...
... It is sayde in the lawe & trouth it is that ...
...y be not pledable at the cõmõ lawe. Secondly ...
...cõmon lawe is taken as the kinges courtes ...
...his benche or of the common place. and it is ...
...hen when a rule is removed out of auncien ...
...meane for that the lande is franke fee and ...
...dable at the comon lawe, that is to saye in ...
...kinges court and not in auncien demeane.

And

ing vnder this maner taken, & the offend
pleaded glad in base courtes as in courtes
tong, the cause and the court of appeal
such order this maner of that ought not
determined in that courte but at the cou
that is to say in the kinges courtes &c. T
by the comen lawe is vnderstand suche th
as were lawe before ange statute made
point that is in questiō: for that ꝑticular
ben for lawe by the generall or particuler
tomes and maximes of the realme or by
lawe of reason & the lawe of god: no other
added to them by statute nor otherwise
the case before rehersed in the firste cha
where it is sayd that at the comon lawe te
by the curtesye and tenant in dower were
nishable of wast, that is to say, that before
statute of waste made they were punishab
waste by the ground and maximes of the
bled before the statute made in that point
tenant for terme of life ne for terme of y
were not punishable by the sayd grounde
maximes till by the statute remedy was g
ageinst them and therefore it is sayde that
comon lawe they were not punishable of wa
D. I praye the now procede vnto the sec
question.

¶ The seconde question of the Studente.

The thyrde Chapitre.

that

that same condicion might be holden before
be towne: therefor in euery of the said fyue
then the defendaunt to bee felonie taken
if he appeared not, than for his contumacie
disobeysaunce of the lawe: then commeth to
imprisonment than he shalbe outlawed, & he
shall forfeyte his goodes to the kynge and
queene: what auantages in the same
doth not here to be remembred now. And
cause he was in this case called according
lawe & appeared not: that seemeth that the
hath good title to the goodes both of
the D. If he had knowledge of the fact
he be it seemeth he kyng hath good title
fore any such. But if he had no knowl
thereof it seemeth not so, for the defaute
charged in him (as it appeareth by thyne
reason) in his contumacie and disobe
the lawe: and if he were ignorant of the
than can there bee alligned in him no diso
ence, for disobedience implieth a knowl
of that he should haue obeied vnto. &c.
It seemeth in this case that he should be
led to take knowledge of the fact or how
for sith he hath attended to offende the law
seemeth reason that he shalbe compelled to
herde what the law will doe & geue him
not only that that he should rather
amended & lyue more vpright than for to tary
were sued for it. And so it seemeth the ig
of the fact is of his owne defaute, speci
sith in the lawe is set such order that every
may knowe if he will what fact is take

note

and

the diuersitie is this. It hath ben vsed as an ex-
ception in the lawe that tenant by the curtesie
and tenant in dower should take the land with
the charge, that is to say, that they should do no
waste thereof ne suffer none to be done. & where
an action of waste was geuen after against a te-
nant for terme of life, than was he taken to be
in the same case as to that point of waste as tenant
by the curtesie and tenant in dower was, that is
to say, that he should do no waste nor suffer none
to be done, for there is another maxime in the lawe
that all cases, like vnto other cases
may be ruled after the same lawe as the other ca-
se is, and yet no reason of diuersitie can be al-
leged why the tenaunt for terme of life after an
action of waste was geuen against him, should
haue any more fauour in the lawe than the tenaunt
by the curtesie or tenaunt in dower should therfore
he is put vnder the same maxime as they be, that
is to say, that he shal do no waste ne suffer none to
be done, and so it seemeth that the lawe in this case
hath not considered the abilitie of the person that
doth the waste whether he be able to make recom-
pence for the waste or not. But the effect of the
lawe maketh reason whereby they haue wilfully taken
vpon them the charge to se that no waste shall be
done. D. I haue heard that if houses of theirs
be destroied with sodain tempest or such
like accidents that they shal not be charged with
waste. S. Trouth it is. D. And I thinke
the cause is because they can haue no recouery ouer.
S. I take not y for the reason but for it is an old
receiued maxime in the lawe that they should

that is to say, they shal at their perill see that no wast shalbe done, and not by the lawe of nature for there is no maxime in that case to helpe the tenant ne that he cannot be holpen by the lawe of reason, it seemeth that he shall be charged in that case by his owne act both in lawe and conscience, whether the stranger be able to recompence him or not. D. I doubt in this case whether this maxime that thou speakest of is reasonable or not that is to say, that tenauntes by the curtesie and tenantes in dower wer bounden by the common lawe that they should do no wast that is over that their perill to see that no wast should be done by none other. For that lawe seemeth not reasonable that hindreth a man to an impossibilitie. If no it is impossible to prevent that no wast shalbe done by strangers, for it may be sodenly done in the night that the tenates can have no notice of, or by great power that thei be not able to resist, and therfore me thinketh thei ought not to be charged in those cases for the wast, without thei may have goon remedy over, and thā percase the land maynteyned reasonable, and els me thinketh it is a maxime against reason. D. As I have sayd before no man shalbe compelled to take that bond upon him but he that wyl take the land, and yf he wyl take the land it is reason he take the charge as it is wont accustomed without, and thā if any hurt grow to him therby it is through his owne act and his owne assent, for he might have refused the lease yf he would.

D. Though a man may refuse to take estate for terme of life, or for terme of yeres, a woman may

dentis to take her dowrer, yet tenaunt by the curte-
sie not refuse to take his estate, for maundement of
the death of his wyfe, the possession abiden by
hym by the act of the law without entre, and
then I put the case that after the death of his
wyfe, he would waste the possession and after
waste wer done by a straunger: whether thinke
thou that he should aunswer to the waste. S.
I thinke he should by the lawe. D. And how
standeth that with reason, seyng there is no de-
fault in hym. S. It was his default, and
his owne parell that he would marry an inhery-
trys: wherupon such daunger might folowe. D.
I put case that he wer within age at the mary-
age or that the land descended to his wife after he
maryed her. S. There thou moueste a fur-
ther doubt than the first question is, and thou-
ghe it wer as thou sayst, yet thou canst not say
that there is as great default in hym as is in hym
in the reuersion, and that there is as great reason
why he should be charged with the waste as that
he in the reuersion should be diserited and bere
no maner reuenue ne yet no profite of the land as
the other hath, and though the layd maryage
be thought very straite to the layd tenauntes yet
is it for to be fauoured as much as may in reason
namly because it helpeth much the common wele
for it hurteth the common wealth greatly when
woodes & houses been destroyed, & if they should
answer for no waste, but for waste done by their
there might be waste done by straūgers by eleua-
dement or assent in such colourable maner that
they in the reuersion should neuer haue proofe of

they

¶ The fourth question of the Iurours.

¶ The 5. Chapter.

alle pleade the said certificat, yet I thynke that
he [illegible] knowe hiselfe to be the very true heire
[illegible] pleade it, & that is for two causes wher-
of the one is this.

Every man is bound by the lawe of reason to
do as he would be done to, but I thynke that if he
that pleadeth that certificat wer in like case: he
would thynke that no man knowyng the sayde
certificat to be vntrue myght with conscience
[illegible] it against hym, wherfore no more may he
[illegible] against none other.

The other cause is this, although the certyfi-
cate be pleaded, yet is the tenaunt bounden in co-
science to make restitucion therof as thou hast said
by fore, and than in case that he would not make
restitucion, than he that pleadeth the plee, should
offende therby in like offence, for he hath holpen to set
the other man in such a libertie that he may chose
whether he will use the land or not, and so he
maye put hym self to the ieopardy of another
mans conscience. And it is written Ecclesiastici.iii.
Qui amat periculum peribit in illo. That is, he
that wilfully will put hymself in ieopardy to of-
fende shall perish therin, and therfore it is the sure
way to eschew perill from hym that knoweth
not that he is heyre, not to pleade it, and as for the
inconvenience that thou sayst must nedes folowe
the certificat be pleaded: as to that it may be
answered that it may be pleded by some other that
knoweth not that he is very heyre, & if the case be
so put that there is none other learned that but
he will medyseth that he shal rather suffer the
[illegible] inconvenience than to hurt his owne soule,
for alway charitie beggynneth at hymself and so e-

very

…ery man ought to suffer all other offences to …
…shame he himself wrongfully. And now that …
…know well myne opinion in this case I pray …
…procede to another question.

The fifth question of the student.

The vi. Chapter.

Whether may a man with conscience …
counsayle with the plaintife in an …
at the cloze into knowing that he defendant …
sufficient matter in conscience wherby he …
discharged by a Subpena in the chauncery …
he cannot pleade at the common law or not.

D. I pray the put a case therof in certain …
els the question is very general.

S. I will put the same case that thou put …
in our first dialogue in latin the x. Chapter. …
is to say if a man bound in an obligacion …
money and taketh none acquitance to that …
common law he shall be compelled to pay …
money agayn for such consideracion as appeareth …
in the xv. chapter of the said dialogue where …
shewed evidently how the law in that case is …
upon a good reasonable ground much necessary …
for all the people, howbeit that a man may lose …
tyme through his own default take hurt therby …
wherfor I pray the herwant thyne opinion.

D. This case seemeth to be like to the case …
thou hast put next before this, and that he …
knoweth the payment to be made hath not …
would be done to it he gave counsel that an …

to be taken to haue it payde agayn
gyf he be sworne to gene counsell accordyng
the lawe as lerned men at the lawe be, it seemeth
he is bound to gene counsayle accordyng to the
lawe, els he should not perfourme his oth.
In thyse wordes (accordyng to the lawe) is
vnderstand the lawe of god and the lawe of reason
as well as the lawe and customes of the realme,
as thou hast sayd thy self in our fyrst dialoge
before, that the lawe of god and the lawe of rea-
son were especial grounded of the lawes of Eng
land. Wherfore as me thinketh he may gene no coū-
sayle (agayng his othe) neyther agaynst the lawe of
god nor the lawe of reason, and certain it is that
this article, that is to say, that a man shal do as he
would be done to, is grounded vpon both the lawe
lawes. And fyrst yt it is grounded vpō the lawe of
reason, it is euident of it self. And in the. vi. chap-
ter of S. Luke it is sayd. Et prout vultis vt fa-
ciant vobis homines, et vos facite illis similiter,
that is to say al yt other me should do to you: do ye
you to them, and so it is grounded vpon the lawe
of god. Wherfore if he should gene counsaile agaynst
the defendaunt in that case, he should do agaynst
both the sayd lawes.. S. If the defendaunt
have none other remedy but at the common lawe,
I would agree wel it were as thou sayst, but in
that case he may haue good remedy by a Subpena,
and this is the way that shal induce him directly
by his Subpena, that is to say, vpon it appereth
that the plaintife shal recouer by the lawe. D.
Though the defendaunt may be discharged by Subpena
yet the bringing in of his proofes there will be to
the

the charge of the defendant, and also the pl
may dye or they come in. Also there is a grou
the law of reason, quod nihil penitus cons
titution, that is we may do nothing agayn
trouth and seth he knoweth it is trouth tha
money is payde he may doo nothing agayn
trouth, and if he should be of counsayle wyt
plaintife he muste suppose and averre that it
bery due dat of the plaintife, and that the
dant with holdeth it from hi vnlawfully
he knoweth himself to be lyarre, wherfore h
not with conscyence in this case be of cou
with the plaintife, knowyng that the plaint
paid al ready, wherfore if thou be content
this answere I pray the procede to some
question. S. I wyl with good wyll.

The. vii. question of the student.

The. vii. Chapter.

A Man maketh a feoffement to the vse of h
and of hys heyres, and aft the feffour put
in his beastes to manure the ground and the fe
taketh them as damages feasant and putteth
in pounde and the feffour bringeth an accion
trespasse agaynst hym for entring into his gro
ge. Whether may any man knowyng the law
be of counsayle with the feoffe to ouerthe that
ction. D. May he by the comon law ouerth
accion seyng that the feoffour ought in conscy
to haue the profites. S. We dyuyde, for as to the

A prouision for
[illegible]

[illegible] into the whole interest is in the feoffe &
[illegible] will beside his conscience and take
[illegible] the feoffour hath no remedy by the cō
[illegible], but is driuen in that case to sue for his
[illegible] by subpena for the profits, and to cause
[illegible] to reuoke upon agayn. and that may some
[illegible] most common case where the subpena
[illegible]. that is to say before the statute of Ry-
[illegible] they do but seek that statute the feoffour
[illegible] lefully make a feoffement. But neuer the-
[illegible] the profites receiued, the feoffour hath yet
[illegible] but by subpena as he had before the
[illegible] statute. And so the supposell of this action
[illegible] is untrue in euery poynt as to the cō-
[illegible] tale.

Though the accio be untrue as to the tale
[illegible] he that surely is ought in cōscience to paye that
[illegible] immediately by the accio, that is to say, damages
[illegible] the profites, & as it semeth no mā may reproch
[illegible] him for that he hath done. ¶. Though ethyp-
[illegible] he should be charged with the profites, yet cōscience
[illegible] not that for the attaining thereof the feoffour
[illegible] make an vntrue surmise. Therfore against
[illegible] vntrue surmise euery man may rightly cōscience
[illegible] his counsaylle, for in that doyng he trifleth
[illegible] with the plaintife to haue the profites, but he ryght
[illegible] wisely him that he should not maintain an vn-
[illegible] dede for the profites. And it suffiseth not in
[illegible] case no yet in cōscience as me seemeth that a mā
[illegible] ought to that he surely ought, but that also he sue
[illegible] by all meanes, & that he haue both good ryght &
[illegible] good & a true cōscience ye ought to haue ryght

for

for if a man haue ryght to lande as heire to his
father and he will bring an accion as heire to his
mother that neuer had right, yet y man may
counsaile againſt that accion though he know
haue right by another meanes, and ſo he may
beth he may doe in dilatories, wherby the
may take hurt if it were not pleaded, though
know the plaintife haue ryght as if the
of towne be miſnamed or if the degrees in
centre be miſtaken, but if the part ſhould
hurt by abbatting of a dilatory there he
eth that the plaintife hath right may not
that dilatory with conſcience, as in a forme
to pleade in abatement of the writ becauſe
not made himſelf heyre to him that was
ſed, or in a writ of ryght for that the demaun
hath committed one that ſeeth ryght ne iuſt
me he may not aſſent to the calling of an
not protection for him if he know that the
maundaunt hath ryght, ne he may not be
him except if he that he knowerly that the
hath a true cauſe of voucher and of lyen, and
he doth it to bring him thereto, and in like
may not pray ayde for him onles he know
pray haue good cauſe of voucher, and lyen
or that he know that the pray hath ſomewhat
pleade that the tenant may not pleade as
nage in the demaundaunt or ſuch other.

Though the plaintife hath brought an accion
is untrue and not maintenable in the law, yet
not that both wrong to the plaintife in the
holding of the profites an writ before the
brought as bringing the accion, and that

[illegible] the seruice [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible]

[illegible] for the restore for in that case [illegible]
[illegible] by the assent of the parties [illegible]
it seemeth that there is no assent of the [illegible]
[illegible] especially no restreint, for that [illegible]
[illegible] comparison [illegible] to take [illegible]
[illegible] is not mercy to be [illegible]
[illegible] for as is the affeering of the [illegible]
[illegible] and to the party hurte [illegible]
[illegible] is prouided that [illegible]
[illegible] where the [illegible] is taken [illegible]
[illegible] is not [illegible] prone for the [illegible]
[illegible] before by the first contracte
[illegible] [illegible] great diuersite be-
[illegible] taken. D. By that reason it se-
[illegible] that if he that distraineth in the first case
[illegible] take any thing for his passage [illegible]
[illegible] in conscience to restore it againe
[illegible] aforesaide and not certayne no
[illegible] and me seemeth that [illegible]
[illegible] that he taketh, for though he
[illegible] right to haue the tolle as he receiueth
[illegible] he ought not to haue that money that he re-
ceiueth, for he came to that money by an vnlaull
meanes wherefore it seemeth he ought to restore
[illegible]gayne. D. And if he should be compelled
to restore it againe: should he not yet (for that he
receiued it once) bee barred of his first accion
notwithstanding the repayment. S.

I will not at this time discusse all the
question, but there I will leave it
to the discretion of my reader, whether
that he would not commit the same,
thereto a little I will come to the matter
as me seemeth when he hath reported the
that he is pretended to be tried accord
condemned in an action of trespass for
and after the defendant reuerseth the
by a writ of error and some say more
than the plaintife is pretended to be
And therefore if he that in this case
among pretended that he took by the
trespasse that he asked the matter for
that the other mainteine, but as touching
it, me seemeth he did very well to be
Iconcessa therefore I would aduise
to be well aware howe he maintaineth
case against the law. D. For example
and I haue matter in this case that
may haue an action of trespass
bilreuoked so that he is taken in
as a wrong doer, and therefore
doctrine is the same law as
force. And I may the more
ning a man may lawfully
thyself.

¶ For what thing a man may lawfully vnlaye bilraine

The xi. Chapter.

[illegible] distreyne for a rent [illegible] and for all manner of services, [illegible] [illegible] [illegible]

But if a man make a leafe at the feaſt of S. [illegible] made for to endure vp the feaſt of Chriſtenmaſſe next following, that is to ſaye for a yere reſeruing a rent at the aforeſayde feaſt of the Annunciation of our Lady and laufully without the graūt of any other there he may diſtreine for both the rents aforeſayde as the leaſe commaundeth, that is to ſay for all the aforeſayd feaſt of Chriſtenmaſſe.

Also if a man haue lande for terme of life of Iohn at Stile and rendrith a leafe for terme of yeres reſeruing a rent, that rent is determined by the death of Iohn at Stile. Then he that hath diſtreyned before his retorne is determined.

Also if he to whome the leaſe was made dieth before the yeres ended, or elſe the leaſe is forfeited, or a gifte in taile reſeruing a rente ouer the reuerſion is good and the leſſour may diſtreine.

Also if a ſeruaūt be arreſted by the ſeruice of a Bonde by a Bailif, a certayne ſumme of money to be paied at a certayne day, and after the ſeruaūt is diſcharged by the Bailif, and agree that if he be not paied by ſuch a day that at certain parties therein aſſigned that diſtraine, in this caſe the diſtreſſe is tortious if the ſeruaūt and remaine be, and the reaſon why the lord by leaſe and rent, and the lord by graūt awaye the ſeruice reſeruing the rent and the tenant attourneth in this caſe he that hath right may diſtraine for the rent, for it is become a rent ſeche.

But if a man make a gift in taile to a nother reſeruing fealty and certain rent, and after that he graūteth a leaſe for life reſeruing the rent and the reuerſion to him ſelfe, in this caſe he that diſtreyneth for the rent

for

the grounde of the feruice is holde for the fe-
rance can not be severed fro the reuersion. And
for herist seruice the lorde shall distreyne & for
herist rysoune he shal seale and not distreyne.
Also if a rent be assigned to make a partition or
allowement of dower equal he or she to whome
that rent is assigned may distreyne as in al theis ca-
ses above sayd where a man maye distreyne he
may not distreyne in the night but for damages
feasant, that is to say, where beastes doe hurte
in his grounde he maye distreyne in the night.
Also for wastes, for reperacions, for accomptes
for dettes upon contractes or such other no mā
may lawefully distreyne.

¶ The.viii. question of the Studente.

The.x.Chaptre.

If a man do a trespasse & aft make hys execu-
tours & dye before any amendes made whe-
ther he his executours bound in conscience to
make amendes for the trespas if they haue suf-
fisient goodes thereto, though there be noe re-
medy againste thē by the lawe to compel thē to it.

D. It is no doubte but they are bound therto
in conscience before any other dede I charite that
they may doe for hi of their owne deuocō.

S. Thē wonld I wete if the testatour made legā-
cies by his will, whether the executours be bound
to do first, that is to say, to make amendes for the
trespasse or to pay the legacies, if they haue
be goodes to doe both.

D. To pay legacies

For if they ought first to make restitucion for the
trespasse and that have not sufficient to paye
legacies they ought not be taken in the
handes of their executours goodes for they
not compellable by no lawe to make amendes
for the trespasse because euery trespasse
with the person, but the legacies they ought
be compelled by the lawe spirituall to fulfill
To they ought be compelled to pay the legacies
of their owne goodes, and they shall not be
pelled thereto by no lawe ne conscience, but
the case were that he have sufficient goodes
doe both, then me thinketh they be bounde
doe both and that they bee bounden to make
mendes for the trespasse before they may
any other charitable dede for the sellatoure
they? owne mind as I haue said before, except
the funeral expences that be necessary which must
be alowed before al other thinge. S. And
what the proving of the testament. D. The ordi-
nary may nothing take vp conscience therefore, if
there be not sufficient goodes beside for the fu-
nerailes to pay the dettes and to make resti-
cion. And in likewise the executours be bounde
to pay dettes vpon a simple cõtracte before any
other dede of charite that they may do for their
sellatour of their owne deuocion thoughe they
shall not be compelled therto by the lawe. S.
And whether thinkest thou that they be bounde
to doe first, that is to say, to make amendes for
the trespasse or to pay the dettes vpon a simple
contracte. D. To pay the dettes for that is
certeine and the trespasse is arbitrable. S.

for the playner declaracio of this matter
I pray the reme me the mind by
what reason it is that a man may make executours
and that the executours if they take vpō hym to be
executours perfourme the will & dispose the goodes
of the testatour. D. I thinke yt it
is by the law of reason. M. And me thinketh that it
should be rather by the custome of ȳ realm. D. In
all causes & in all laues they make executours.
M. That seemeth to be rather by a general cus-
tome after that the law & custome of ȳ parties was
brought in than by the lawe of reason, for as
farre as al thinges were in comon there were
no executours ne willes ne they needed not ne
what propartye was after brought in: me
thinketh that yet makinge of executours and
disposing of goodes by wyll after a maners
wealth folowed not necessarylye there vpon, for
it might haue been made for a lawe that a man
should haue had the propartye of hys goodes
only during hys life, and that than hys better
sayed al hys goodes to haue ben left to hys wife
and children or next of hys kynne without any
legacies makinge there of and so might it nowe
here ordeyned by statute, and the statute good
and not agenste reason, wherefore it appe-
reth that executours haue no auctorite by the
lawe of reason but by the lawe of man. And by
the olde lawe and custome of this realme a man
may make executours and dispose hys goodes
by hys will, and than hys executours shall haue
the execution therof and hys heyres shall haue
nothing but if any particuler custome helpe ȳ

the executours ſhal alſo haue the hole poſſeſ-
ſion & diſpoſicion of all his goodes & catteles
real as perſonal, though no word be expreſſed
ſpoke in the will that they ſhall haue the ſame.
ſhall haue alſo accion to recouer all dets that
the teſtatour the day of his deth & legacies
teſtatour be payed before ſhal haue the diſpo-
ſicio of them to the vſe of that teſtatours ſoule
they owne vſe, & to me thiſeth that the auc-
ſute to make executours & that they ſhall diſpoſe
the goodes for the teſtatour is by the conſue
the realm. But thā I thinke as thou ſaiſt
by the law of god they ſhalbe bound to doe
dyth, that is to the moſte profite of the ſoule
theyr teſtatour where the diſpoſicion reſteth
lefte to their diſcrecion, & that I agree wel
to pay dettes vpon contractes and to make
medes for wrōges done to the teſtatour thou
they bee not compelled thereto by the lawe
cuſtome of the realme if their be none other
nor legacie that they be bōd to pay by the la
but if two ſeueral dettes be payable by the la
than which dette they ſhal doe firſte I confeſſe
I am ſomwhat in doubte. D. Let vs firſt
know what the common lawe is therin.

S. The common lawe is that if the teſtatour
owe .x. li. to two men ſeuerally by obligacion
by ſuch other maner that an accion lieth againſt
his executours therof by the lawe, and he le-
ueth goodes to paye the one & not both, that in
that caſe he that can firſt obtayne iuge̅t
againſt the executours ſhall haue execution of
the hole and the other ſhall haue nothinge, but

which of them he shal in conscience chose his
common is he treated hath. D.
must be considered the cause why the
betwene and than he must alter accordyng
is lawful fauour to him that hath the cle-
cause of her, and if both haue like cause that
conscience he maye here his fauoure where
he maye nede and greatest charite.
Saye the executours in that case delaye
that accion that is firste taken if it shalde not
to good conscience to be payde as another
where of no accion is brought and procure
an accion may be brought there of and than
to chose that accion that he may to haue exe-
cution and that the executours to be discharged
of the other. D. Why may he not in that
case paye the other without accion and to bee
sued in the lawe ageinst the first.
herein for all an accio is taken the execu-
may not manasse the goodes so but that he
se so much as shall paye the dette where of the
action is taken, and if he doe he shall paye it of
his owne goodes, except another recouer and
haue iudgement ageinst him hauing that accion
and that without coun.

D. Than to answere to thy question I tell
that he beleeue that he lawful as by exemple,
assurance a .a. by .b. Dilatory plee in abate-
ment of the writte that is true, he may delay-
he maye plede no butrye plee to preterre
the other to his hurte. But I saye the what is
the lawe of leyeres restitucion and dettes but
that they ought rather all charite

to be

Epby ms. law
of Scripture
upon Tithes

to be payed than a dett vpō an obligacion
may the fauour of that execucour vp in thos
lees, &c. Nothing for it they either pai
legacies make restitucions, or pay dettes
executes and hepe not sufficient to pay
debtes they are compellable by the lawe
that shalbe taken as Deuastauerit bona
tors, that is to saye, that they haue wast
goodes of theyr testatours, and therefor
shalbe compelled to pay the dets of they
goodes, and so it is if they paye a dette vp
obligacio wherof the day is yet to come
it be the elder dett & that it be the more
es haue it paied. D. Yet in that case
whom the dette is all ready owing for, be
after that daye of the other obligacion is
the he may pay him without daunger.
es true if there be no action taken vpon
though there be, yet if that actiō may be
by lawfull meanes as thou hast spoken
fore till after the day and than an accion
vpon it than may the executours confes
accion and than after iudgement he may
the dette without daunger of the lawe.
D. Is not that confessing of the acc
done of purpose a coyen in the lawe.
es therefor for coyen is where the acc
barrie, and not where the executours be
lawfull faulde. D. The ordinarye
the accompt what the cause be the reteries
require much what is best for the testatour.
Ex. But he maye not abuse them to acc
against the ordre of the common lawe.

The.ix. question of the Studente.

The.ix. Chaptre.

...man is indetted to another vpon a fun...
...he contracte in.xx.li. and he maketh hys
...bequeteth.xx.li. to Henrye thatte and
...and leueth goodes to hys executours on
...bury him with, and to performe the laid
...and after the layde executours delyuer
...goodes of their teftatoure in performaunce
...layd bequeft, whether is he to whom the
...is made bounde in conficience to pay the
...vpō the fimple contract to the laid Henry
...or not. D. Is he not bound therto by the
...D. No verely. D. And what thinkeft thou
...in conficience. S. I thinke that he is not
...thereto in conficience, for he is neyther
...executour, adminiftratour, nor executour. And
...haue not heard that any man is bounde to pay
...dettes of any man that is deceffed, but he be one
...of thefe, for the goodes that the teftatour
...gyueth the executours wer neuer charged with
...the dett, but the parte of the teftatour whyle he
...was only charged with the dett & not his
...goodes & hys executours that reyfeth hys eftat
...by his death hauing goodes therto of the tef-
...tatours he charged alſo with the dettes and not
...the goodes. And therefore if an executour gyue
...or fell all the goodes of the teftatour or o-
...therwyfe waſte them: he that hath the goodes is
...charged with the dett in lawe nor conficience,
...but the executours fhalbe charged of their owne
goodes

goodes and in ythe iaste if John at Noke
to. A. D. xx. li. And. A. D. oweth to. C. D. xx
after. A. D. dyeth in testate hauing none
goodes but the layd. xx. li. which the layd
at Noke oweth him, yet the layed. C. D.
haue no remedy ageinst the layd. John at
for he standeth not charged to him in la
conscience. But the ordinary in that case
ment administracion of the goodes of the
A. D. And the layd administratoure mu
the money of the laid John at Noke a pa
the layd C. D. And the layd John at N. h
pay it himself because he is not charged
with to him, and no more me thinketh i
that he to whome that bequest is made
ther charged to him that the money was
ing ty in laive nor conscience.

D. Than shewe me thy minde by what
it is grounded as thou thinkest that execu
be bound to pay dettes before legacies,
ther is it by the law of god, or by the law
son, or by the lawe of ma as thou thinkest.

I thinke that it is both by the lawe of re
by the lawe of god, for reason will that the
doe first that is best for the testatoure, and
is to pay dettes that his testatour is boun
pay before legacies that he is not bound to
also by the lawe of god they are bound to pa
dettes first, for ſith they are bounde by the la
of god to loue their neighbour, they are bo
do for him that shal be best for hi whō they
taken the charge thereto, as executours
when they agree to take the charge of ther

[illegible]

...ellatour vpon them, and it is better for
...atour that hys dettes be payed: where-
...soute that lacke payne: than that is le-
...be parfourmed, wherefore he that lacke
...ne for the not parfourmyng of the. And
...o be vnderstanne where the legacie is
...of hys owne free will & not where it is made
...satisfaccion of any dutye. And on the saying
...Gregory the very true vyande of loue is
...ne. But this mā is not in that case, for he
...take the charge vpō hī to pay the dettes
...testatour. And therfore he is not bounde
...in lawe nor conscience as me seemeth.
...ther the executours shuld have be ware
...had paied ye legacies seing there were
...to paye. D. The executours might
...otherwise have done in this case but to
...the legacies for the they should have been
...ied by the lawe to have payed, & so they
...not have ben to have payed for ye dett vpon
...racte. And therfore they did well in pet-
...ing of the legacie, but he to whome the le-
...was made ought not to have taken them
...ought in conscience to have suffred them to
...gone to the payement of the dette, & so the
...not to but take the wher he had no right
...it semeth that whā he take the he tooke
...the charge in obedience to pay the det, for
...the executours were cōpellable by the lawe
...parfourme that bequell and not to pay the
...therefore whan they parfourmed that be-
...they were discharged thereby agenste
...that the dette was owing to, in the lawe
and

and conſcience and thā the charge reſted by
that tolde the goodes where he ought not in
ſcēce to haue take thē, but if it had ben a det
an obligacion or ſuch other det wherupon th
dy might haue be had againſt the executours
the law. ¶ there ſuppoſe that though the ex
tours had performed the legacie that yet
whō the legacie was made and performed
not bebe charged in conſcience to the payme
the det for the executours ſhoode ſtyll charg
there to of their owne goodes ¶ he to whō th
bequeſt was made was only bound in conſci
to repaye that he receiued to the executours
cauſe he had no right to haue receiued it, fo
geinſt the executours he had no right the
D. Than it ſeemeth in thys caſe that it
ſhoode he to whom the bequeſt was made, th
to pay that he receiued to the executours,
than they to pape it rather than he. D.
executours haue no further medling with
this caſe is, for whā they performed the be
they were diſcharged againſt both the ci
lawe and conſcience, and alſo he to whom
bequeſt was made ſhoode not in this caſe ch
to the executours, for as againſt them he
good title by the lawe, ſo thus charge ſh
only againſt hym that the dette is owyn
and the ſame lawe that is in this caſe had
vpon a contracte is if the teſtatour had
treſpas wherupon he ought to haue made re
ſtuction, that is to ſay, that he to whome the
queſt is made is bound to make the amendes
the treſpaſſe, for it ſhould be no diſcharge to

The x. question of the Student.

The.xi.Chapte.

vide mant
fo 17 21 fo

subiect be in the lawe but a chatell, before
hys executors, & not to the heyre, for
ner of chatell neyther realt nor parcell
not after the lawe of the realme dilcen
the heire.

D. Thou sayest well in the tale next before,
it is not of the lawe of reason that a man
make executours, and dispose his goodes
wil, & that the executours shal haue the g
to dispose but by the lawe of man, and if
left to the termination of the lawe of mā.
in such cases as the lawe geueth such cha
unto the executours, they shal haue good
vnto them, and in such cases as the lawe
such chatelles from them they be rem
take no cha. And therefore it is thought
y is a mā for a yeat of ryght of wards of
that he ought by hys owne fee and birth
the wyfe and hys heyre like a retornor
ding to the statute of westminstre secon
secondly that in that case the heyre sha
the warde shal be against the executours,
it is but a chatel, and they take the reason
because of the said statute and so might
purpose by statute that al wardes shuld
the heyres & not to the executours. But
thys tale lyth the lawe is such that the
brother that in this case haue an title of
dalhoell as heyre to his father not makin
mention of his other brother and recouer
gres as well in the time of hys brother as
owne time. It appeteth that the iuin geueth
right of theyr damages to the heire and the

The xi question of the student.

The xii Chapter.

When lands of tenements be given to a man and his wife and to the heirs of the body of the husband begotten, and the husband dieth without heir of his body begotten, and the wife taketh another husband and hath issue by him, and after the husband dieth without heir of his body begotten, and after the wife dieth, whether the issue of the husband or the issue of the wife shall have the land? And in this case it is to be considered whether the wife shall have any dower of the land of her husband, or not. And it seemeth that she shall not have any dower, for that she hath accepted another husband after the death of her husband, to whom the land was given in tail. And by the law the wife shall recover no damages for the deforcement of the tenant in tail after the death of her husband, for that she hath accepted another husband after the death of her husband, to whom the land was given in tail. And by the law the wife shall recover no damages, for the deforcement of the tenant in tail after the death of her husband, for that she hath accepted another husband after the death of her husband, to whom the land was given in tail. And by the law the wife shall recover no damages, for the deforcement of the tenant in tail after the death of her husband, for that she hath accepted another husband after the death of her husband, to whom the land was given in tail.

D. And both these ought to have their remedy to the heirs of the husband, for that they are in privity to have also the profits for the benefit of the husband, though they have no remedy to come to the by the law, for methinketh this case is like to a case that stand in our first dyalogue in Latin the xviii. Chapter. That if a tenant for terms of life be diseased and

above. For in both cases the tenaunt is bounden
by the writte to the tornying court, but it is not to
this ende, and to the intente to attorne the rente
in this case that neuer he pleaded the lawe nor
defence to yelde damages for the
fore for respect, that he
in graunte
there pleaded to
the rente, because he was
he ought to haue, before, and that is the cause
that he brought not his action. Also, if
the writte before the tenaunt
cause reasonable cause he alleage
he ought, but nowe he is bounden to alleage
the writte, that before he pleaded
cause for both causes reasonable
by the lawe. And yet he may
tenaunt, he apparently confessing that before he
to alleage her bonder he was
he will not that of right he
he ought to be sworn, should haue
to alter the request he betweene her bonder
reasonable, and ought in conscience to
manner therefore. And as to the
alleged in her, that she ought not her action
forceth little for actions
party ought not do that he ought to
And for that he ought of right to
bynde it not, he can
than as to the damages before the
bounden also bounden to pay them, for
was required to alleage bonder and
appeareth that he neuer intended to yelde bonder
the beginning, & so he is a long doer in his

conicyeng,

...sequence, and moreouer if the husband haue lea-
...ue by law to such that if the tenant refuse to ac-
...knowledge whan he is required whether he
...whom he maketh a letts of power against him,
...in such case the demand shall recouer damages as
...for the terme before the request as after, and
...after, not in that case after terme required to
...haue paied any manner of damages if he hath been
...ready to assigne dower whan it was demanded
...of him, that is to say, &c. The cause in that
...case shall put in ure that the statute is
...such that the demandaunt shall recouer dama-
...ges where the husband hath ceased, and that ha-
...th been alway construed that where the te-
...nant was not lord that he is and hath been alway
...ready to paie dower, &c. that the demandaunt shall
...recouer damages for the death of her husband.
...Vnto this there is no lawe of the realme
...that can put the demandaunt neither counsell
...by reason, and furthermore strength is reason
...for he is refused, that he neuer intended
...the death of the husband to aligne her dower
...that maketh not, but that he had good reason
...to take the profites of her tenth part for the time
...as well as he had of his own two parcenerall re-
...ceiuers is aforesaid and so methinketh
...that notwithstanding the demer he is not bound
...to pay damages in this case, but for the terme
...present and not for the terme before. Dat. &c.
...Sir, I am content with the reason.

¶ The xij. question of the Student.

¶ The xiij Chapter.

Lviij.

¶ The viii. question of the Student.

¶ The 50. Chapter.

[illegible] seased of certain lands in fee hath a [illegible] which is his heire apparaunt, the [illegible] taketh a husband and they have issue [illegible] seased, and the husband as long as [illegible] of his wife, giueth to ward the lande to [illegible] and before he can come there: he is [illegible] seased, whether ought he to have the lande in [illegible] for terme of his life as tenaunt by the [illegible] because he hath done that in him was to [illegible] he pleaded in his owne right? he ought [illegible] from tenaunt by the curtesie accordyng to the [illegible] that he hath neyther haue it by the lawe [illegible] ience. D. It is clearely holden in [illegible] that he shall not be tenaunt by the curtesie [illegible] case because he had not possession in deede. [illegible] wedded, and seased vpon a possession in lande [illegible] woman shall have her dower, but no man shall [illegible] by the curtesie of lande wherof his wife [illegible] possession in deede.

[illegible] woman shall tenaunt by the curtesie of a rent [illegible] her wife die before the day of payment, or in [illegible] of an annowell thereof, the day before the [illegible] ence. S. That is trouth, for the olde [illegible] and maxime of the lawe is that he shall be [illegible] of whō there is no maxime yt tenaunt by the [illegible] with hath possession in deede. D. And what [illegible] is the reason that there is such a maxime in the

law of the ruine of the abouefaid rather then
land, to hau the husband doth as much again
is to haue poſſeſſion and cannot. &c.
alligne the reaſon to be becauſe it is impoſſible
haue poſſeſſion in deed of the rent, or of abouſ
before the day of payment of the rent, or before
anoyaunce of the abouſeion. D. And
impoſſible that he ſhall haue poſſeſſion in deed
land of his wife yet ſo long that he may
by poſſeſſion come to the land after her
decis death, and in her right as that caſe is.
The law is ſuch as I haue declared thee before
I take the very cauſe to be for that there is a
time limited for the rent and the abouſeion,
not for the landes as I haue ſayd before, and
it is ſayd in the viii. Chapter of our firſt diſtinc
it is not alwaye neceſſary to alligne a reaſon of
obſeruation why the maximes of the law of
land were firſt ordayned & admitted for
but it ſufficeth that they haue been alwaye
for law and that they be neither contrary to
law of reaſon nor to the law of god as that
ſtone is not . and therfore if the husband in
caſe be not holpen by conſcience he cannot
pen by the law.

D. And if the law helpe him not conſcience
not helpe him in this caſe, for conſcience muſt
alwaye be grounded upon ſome law , and
in this caſe is grounded upon the law of
and the law of god, for it is not directly
lawes that a man ſhalbe tenant by the curteſy
by the cuſtom of the realm. Wherfore if the
ſtom helpe him not, he can neuer haue in this caſe

¶ The viii. question of the student.

¶ The xvi. Chapter.

Same but Co
and Litt. Rul
of Law

rents

stranger ou
the grantor
by deed

¶ The .xv. question of the .xv. Chapter.

¶ The xvi. Chapter.

...ne that be extincte in the lawe. ...

...ente can not be vouc̄ upon out of the acre ...
...the graūtour but it for that recouere is bad ...
...title and the graūtour becaūse he ...
...re to it shalbe wel receiued to saluine it ...
...if the recouery had ben good & true to the ...
...it had ben as ryght lawfull for it the grau...
...ret the one acre ageūst the graūtour and ...
...title the graūtour shall gape the vouc̄ ...
...of that land that remaynyth in his hand ...
...to the wife is nothyng to the purpos ...
...as to the lawe in whom the vouc̄ be, for the ...
...without the dede expressyd to the vouc̄ ...
...as ageūst him in the lawe as wel as if the ...
...and the wyfe had ioyned therin. ...
...ye not the reuersion that ...
...Henry Beauchā is vouched in a recouere ...
...graūtee the rent after the decesse of ...
...that was recouered for it is not lykely ...
...conscience that he shoulde lose his rent and ...
...no profites of the lande. ...Than he ...
...shall he haue the other portion of his rent ...
...the lawe sayth that the acre that the ...
...his wife hath in ryght shalbe discharged in ...
...lawe. ...I take the lawe so.

...and what in conscience. ...
...ageūste the graūtour me thynketh also it ...
...extincte in conscience for the reason that thou ...
...made (the whych thou for it is all one in cōscie...
...ce) this case as ageūst the graūtour lyke...
...the recouere were to the vse of the graūte ...
...specially seyng that the graūtour is not ...
...ry to the recouerye for the vnite of possession ...

is the cause of extinguishment of the rent ageyll the graūtour both in lawe and conscience. ...
to effect the dede. but if the graūtour had ...
ginen to the cause of the extinguishment as ...
doas in the case that I put in the last Chaptre ...
where the graūtoure entended the graūtee ...
one of the acres to the vse of the graūtee there ...
it is not extincte in conscience in that acre that ...
remayneth in the handes of the graūtoure ...
thoughe it be extincte in the lawe because he ...
dyd ought to the extinguishment hymselfe, but ...
he is not so in your case, and therefore it is ex-
tincte ageynst him in lawe and conscience. ...
the reste he thinketh that the graūtee and ...
conscience ought to have the hole rent of the land ...
the acre that cause the lande reconere to be ...
in his name, for in him was at the begynnyng ...
it is to be vnderstand that in all the cases where ...
it is said before in this chaptre or in the ...
the next before that the rent is extincte in ...
lawe and not in conscience, that in such cases ...
the remedies that the partye might haue ...
had for the rent at the common lawe by distres ...
assise or other wise are determined, and the par-
tie that ought to have the rent in conscience ...
be driuen to sue for his remedy by subpena.

D. I am content with the conceit in this ma-
ter for this time.

The xvi. question of the Studēt.

The xviii. Chaptre.

A villayne is graunted to a man for terme of lyfe, the villayne purchaseth landes to hym and to hys heyres, the tenant for terme of lyfe entreth in thys caſe by the lawe he that entre the landes to hym and to hys heyres whether ſhall he doe ſo in like wyſe in conſcience.

D. Me thynketh it ſhall good to ſe whether it may ſtande with conſcience, that one manne ſhuld clayme an other to be hys villayne, and that he may take fro him hys landes and goodes and put hym body in priſon if he wyll, it ſemeth to toucth not hys neyghboure as him ſelfe that he ſo to him.

That lawe hath been ſo longe vſed in thys realme and in other alſo, and hath been abuſed ſo longe in the lawes of thys realme and of many other lawes alſo and hath ben affermed by Biſhoppes, Abbotes, Quenes, and many other men both ſpirituall and temporal whych haue take aduauntage by the ſayde lawe and haue ſeaſed the landes and goodes of theyr villayns thereby and call it their rightfull enheritaunce ſo to be that I thynke it not good nowe to make a mocke me to put it in argument whether it ſtande with conſcience or not, and therefore I leaue the, admitting the lawe in that behalfe to ſtande in conſcience, helpe me thyne opinion in the queſtion that I haue made. D. Is the lawe ſuche that hee that hath the villayne but only for the terme of lyfe ſhall haue the landes that the villayne purchaſeth in fee to hym & to hys heyres alſo. S. I beleue it be ſo. D. I

mought be granted to a man for terme of life and the remayne throughout, and all the lands escheate the remayne for terme of life escheateth, he shall have there none other estate in the lands than he had at the beginninge, and the reason therof is that it should be like lawe in both cases, & that the lord ought not to have in the lande but such estate as he hath in the tenemente, D. The cases be not like, for I shall take it the escheate the remayne for terme of life of the seignioure hath the landes in the lieu of the seignioure, that is to say in the place of the seignioury and the seignioury is clerely extincte, but I thys case he hath not the lande in the lieu of the villeine, for he that have the villeine hath as he had before but he hath the landes as a gifte come by meanes of the villeyne which he shall have I like case if the villeine had the remayne of a lease, of tenements & annelles he shall have the hole propertie of a lease for terme of yeres he shall have the hole terme, and for terme of life he shall have the same estate, the lorde that have the villeine having the will of the villeine and of him in fees simple and of an estate taile that the villeine hath, the Lorde shall have the hole fee simple, although he had the villeine but onely for terme of yeres so that he entre or take no holding the lands before the time in which of all he shall have nothing.

D. Verely and if the thinge be so, I thinke the sentence followeth the same therin, for a man may thinke that a man may hath confidence towards another man for to be his villeyne, the judgement of the lawe in this case is to determine what estate the

Lord

lord hath in the land by his entre is neither a-
gainste the lawe of reason nor ageinst the law
of goode, and therefore conscience muste folowe
the lawe of the realme, but I praye the let me
make a little digression to here thyne opinion
in an other case somwhat pertayning to the ques-
tion, and it is thys if an executoure have a dis-
lease that is beq̄ testatoure habde for terme of
yeres and he purchaseth landes in fee and the
executoure entreth in to the lande what estate
hath he by his entre.

D. I see simple but that shalbe to the be-
houe of the testatoure and shalbe an actelle in
his handes. D. well than I am contented
with thy concepte at thys tyme in thys case and
I praye the procede to a nother question.

D. Forasmuche as it appereth in this case
and in some other betoke that the knowledge of
the lawe of Englande is right necessarye for
the good ordering of conscience. I wolde
heare thyne opinion if a man mistake the lawe
what daunger stode in conscience for the myste-
king of it. D. I praye the put some case
in certayne therof that thou doubtest in, and
I will with good will shewe the my mynde ther-
in for elles it will be somwhat longe or it can be
playnlye declared, and I wolde not be tedyous
in thys matter.

The.viii. question of the Student.

The.xix. Chaptre.

A man hath a villeyne for terme of life, the villeyne purchaseth landes in fee as in the the case in the laste Chapitre and the tenaunt for terme of life entreth, and after the villein dieth, he in the reuerciion pretendyng that the tenaunt for terme of lyfe, hath nothyng in the land but for terme of life of the villayne, alleth counsayle of one that sheweth him that he hath good right to the lande and that he maye lawefully entre and through that counsayle he in the reuercion entreth, by reason of the which ent great sutes and expences folowe in the lawe to the great hurte of both parties, what daunger is thys to hym that geue the counsayle. D. whether meanest thou that he that gaue the counsaile gaue it wittingly agenst the lawe or that hee was ignoraunt of the lawe, &. What he was ignoraunt of the lawe for if he knewe the lawe and gaue counsayle to the contrary I thinke he bound to restitucion both to him agenst whom he gaue the counsayle, and also to hys client if he would not haue sued but for his counsail of it that they be dapnified by it.

D. Than will I yet further alke the thys question whether he of whom he alked counsayle gaue him self to lerning and to haue knowledge of the lawe after his capacite or that he toke hys hi to gine counsayle and toke no study competit to haue lerning, for if he dyd so I thinke he be bounden in conscience to restitucion of all the costes and damages that he sustayned to whom hee gaue counsayle if he wounde not haue sued but through hys counsayle. And also to the

other

...parye, but if a man that hath taken fal...
...se ne lawye in the lawe, myslake the lawe in
...ome ponct? is here to come to the knowledge
...of, he is not bounden to suche restitucion, for he
...hath done that in hym is, but if suche a man and-
...uise the lawe gyue counsayle agaynste the lawe
...he is bounde in conscience to restitucio of costes
...and damages as thou hast sayd before, and also
...to make amendes for the vntrouth.

...what if he aske counsayle of one that
...he knoweth is not lerned and he gyueth hym
...counsayle in this case to entre by force wherein
...he entreth. D. Than be they both bounde
...in conscience to restitucion, that is to saye the
...partye if he be sufficient and els the counsay-
...loure be cause he assented and gaue counsayle
...to the wronge. M. But what is the counsa-
...layloure in that case bounden to, to hym that he
...gaue counsayle to. D. To nothing for ther
...was as much defaute in hi that asked the couns-
...sayle as in hym that gaue it, for he asked counsay-
...le of hi that he knew was ignorante, & in the other
...was defaute for the presumpcio that he would
...take vpon hym to gyue counsaile in that he was
...ignorant in. M. But what if he that gaue the
...counsayle knewe not but that he that asked it
...had trust in hym that he could and would gyue
...hym good counsayle and that he asked counsaile
...for to obeye well hys conscience howbe it that
...the truth was that he could not so doe. D.
...Than is he that gaue the counsaile bounden to
...offer to the other amendes, but yet the other
...may not take it in conscience. M.

M.viii. That

That were some what perilous for happyly he
would take it thought he have no ryght to it, ex-
cepte the worlde be mel amended. D. wolde
God that were that were. A. I trust
every man will vse hym in this worlde as they
wolde be done to, speake as they thynke, re-
store where they have done wrong, restore money
if they have no ryght to it though it be offred to
doe that they ought for to doe by conscience,
though they can not be compelled to it by no law
and that none will geue counsayle but that they
shall thynke to be according to conscience, and if
they doe to doe that they can to reforme it, and
not to enterme them selfe with such maters as
they be ignorant in, but in such cases to sende
them that aske the counsayle to other that they
shall thynke be more cunning than they are.

D. It were very well if it were as thou hast
sayd but the more pytye is: it is not alwaye so,
and specially there is great defaute in gyuers
of counsayle for some for their owne lucre and
profite gyue counsayl to comforte other to sin
that they know have no ryght, but I trust there
be but feme of them, and some for drede, some
for fauoure, some for malice, and some vpon ob-
stinacie and to have as much done for them a
nother tyme to byde the trouth. And some take
vpon them to geue counsayle in that they be ig-
norant in, and yet whā they know the trouth
will not withdraw that they have mysdone, for
they thinke it should be greatly to their rebuke,
and such parsons folowe not thys counsayle that
sayeth (I) that we have vnadvisedly done: let vs

with

...th good counsle reuoke ageine) S.
...ab if a man gyue counsayle in this realme all
...ing and conscience gyueth him, and
...eth not the lawes of the realme, geueth
...counsayle. D. If the lawe of the
...be not in that case, ageinste the lawe of
...an ageinst the lawe of reaso he geueth not
...counsayle for euery man is bound to folowe
...lawe of the coutry where he is/ & he not a-
...the said lawes/ & so may the case be that
...may bind hi selfe to restitucio. S. At this time
...will no ferther trouble the in this question.

¶ The.xbiii. question of the Student.

The.xx. Chaptre.

If a man of his mere mocion gyue landes to
...henry hearte and to hys heyres by indeture
...upon condicion that he shall yerely at a certein
...day pay to John at Stile out of the same lande
...certeine rent, & if he doe not that than it shal-
...be lawfully to the said John at Stile to ent
...if the rēt in this case be not paid to John at
...stile, whether maye the said John at Stile
...entre into the landes by condicion though hee
...may not entre by the lawe. D. May he not
...entre in this case by the lawe lith the wordes
...of the indenture be that he shal entre. S.
...No verely for there is an auncient maxime in
...the lawe that no man shall take aduauntage of
...a condicion but he that is party or privy to the
...condicion and thus mā is not party nor privey.
...wherfore

wherefore he shal haue none aduantage
D. Though he can haue none aduantage
as partye yet because it appeareth euident
the intent of the giuer was that if the
payed of the rent that he should haue the
It semeth that in conscience he ought to
though he can not haue it by the lawe.
In many cases the entent of the partie
do all intentes if it be not grounded acc
to the lawe. And therfore if a man make
to another for terme of life, and aft of h
mocion he conferreth hys estate for ter
life, to remaine after his death to a noth
to hys heires in thys case that remain
bode in law & conscience, for by the lawe
can no remaynder depende vpon no est
that the same estate begynneth at the same
that the remaynder doth, and in thys
tate began before and the confyrmation
and not hys estate nor gaue him no new
but if a leale bee made to a man for ter
a nother mannes ipse and after the lesso
of hys mere mocion conferreth the lan
lesse for terme of hys owne life the rem
ouer in fee, thys is a good remaindre in
conscience, and so me thinketh the entent
partye shall not be regarded in this case.
And in the first case that thou hast put, me
beth thoughe it passe not by waye of rem
that yet it shall passe as by waye of gra
the reuercion, for euery bede shall be take
strong agenst the grauntour & the taking
bede in this case is an attournament w

1 in who
25 by
45 grau
48 to
my
160 two
129

what can not be, for he ſ the remaynder is
ne to the vſes ſ therfore it cā not be ta-
ry of graūt of the reuercō, for no graūt
e but to him that is partye to the vſe
e by way of remaundre, ſ therfore if a
ake a leaſe for terme of lyfe, and after
graunt to a ſtraunger that the tenāt
of lyfe ſhall haue the lande to hym ſ
ryed, that graunt is voyd if it be made
a mere motion without recompence.
the wife if a man make a leaſe for terme
, and after graunt the reuerciō to one for
lyfe, the remaundre ouer in fe, and the
graūtee attorneth to hym that hath the eſtate
of lyfe, only intendyng ſ he only ſhould
auantage of the graūt by attornēt is voyd,
ſhal take auantage therof, and the at-
ment ſhalbe taken good accordyng to the
, and ſo in this caſe though the feoffoure
ed that if the rent were not payed: that
ſtraunger ſhould entre, yet becauſe the lawe
h no entre in that caſe ſ intēt is voyde
ſame ſtraunger ſhall neither entre into the
by lawe nor conſcience. D. what ſhall
done with that lande as thou ſayndeſt
the condicion broken. S. I thinke that
feoffour in this caſe may lawfully reentre
the feoffment was made vpon condicion
the feoffee ſhould pay a rēt to a ſtraunger in
deed is excluded i the law that if that rēt
not payed to the ſtraūger that the feoffour
ld reēt for tho wordes vpon condicion, im-
h much in the lawe thoughe it be expreſſed.

And

And than whan the feoffour went .ferth
lawe that if the rent were not payed
straunger shoulde entre, thole wordes
in the lawe, and so the effecte of the de
vpon the firſt wordes wherby the feo
reentre in lawe and conſcyence but
ſyall wordes had not ben conditional
haue holden it the greater parte.

D. I pray the put the caſe therof in
with ſuch wordes as be not conditional
may the bett perceyue what thou meane

¶ The.xix.queſtion of the Stude

The.xvi.Chaptre.

S man maketh a feoffment by dede
by the ſame dede it is agreed
ſhal pay to A.B.& to his heires a cer
ly at certeyne dayes,& that yf he pay no
that it is agreed that A.B.& his heires
into the lād,& after the feoffe payeth no
than the queſtion is who ought in con
haue this lande and rent. D. I
gue what conſcience wyll: let vs know
what the lawe wil therin. S. I thin
by the lawe neither the feoffour ne yet
A.B.ſhall neuer ent into the lād: for
not payment of the rēt for there is no reent
caſe graūt to the feoffour for not paiment
as there is in the caſe next before,& the e
is graūt to the ſayn A.B.for not payment
is found in the lawe because he is eſtra

as it appereth afore in the next chapt.
and therfore he thinketh that the grese
in such case is to be to what vse that
shall be taken.
Here apperteyneth this case as thou hast
consideration he recompence quien
fortune wherupon any vse might be de-
and if the case be so to deve and that the
heriares neuer lyst minde therin, to
that it than be taken.
I thinke it maybe taken to be to the vse of
as long as he payeth the rent, for ther
is also why the feoffe should be barred with
of the rent hauing nothing for his la-
it may not conuenently be take that the
of the feoffer was so, except he expect-
and than it must be taken that he entended
compense the feoffe for the hardnesse that he
made at the payment ouer, and by the
habondant his entent apperetly to be so
certain, for if the rent were not payed
that I. D. shuld entre, it is plainly
shuld not to vse any vse perfecte and
the seuerall this case should vary fro the
case of Wels, that is to say, if a man feafed
another to the vse of his wife for life
any couenant to other recompense: the
vse to be of the vse of the feoffment ex-
cepted all be pouned by the bargaine of
of the vse of the lines
was expected that it should be to the
of the feoffe of some other, and than it
shall

shall goe according to hys intent, but in the
me thinketh it shalbe taken that hys
that it should stand be to the vse of the
the cause before rehearsed except the
can be proued, and so the knowledge of
of the feoffour is the greatest staine
ledge of the vse in this case as me
than the feoffour goeth farther and
if the rent be not payed: than the lawe
should entre into the land than it appeareth
his intent was that the rent should cease
that .I. S. should entre into the lande,
he may not by those wordes entre into
after the rules of the lawe, and to haue
yet those wordes seme to be sufficient to
that the intent of the feoffour was that he
haue the vse of the land, for sith he had
to hys owne vse and not to the vse of
foure: so it seemeth he shal haue the vse
that is alligned to him for that payment
rent. D. But I am somwhat in doubt
ther he had that rent to hys owne vse,
intent of the feoffour might be that he
paye the rent for him to some other of
vse might be apointed therof by the feoffour
S. If such an entent can be proued this
must be obserued, but we be in the case
to what vse it shalbe taken, if the intent
feoffour is not be proued, than we
is not to be otherwise taken but that it
the vse of him to whom it should be payed,
though it bee called a rent yet it is no
the lawe, we in the lawe he shall neuer

...e thought it were assigned to hym and ...ires without condicion neyther by dis... ...ise, by writ of annuite, nor otherwise ... be bounen to sue in the chauncery for ... , & thā whan he sueth in the chaūcery ... intreate that he ought to have it by colle... ... that he can have no remedye for it in ... no than sith he hath no remedye to ... it but by way of conscience it semeth it ... taken that whā he hath recouered it that ... to have it in cōscience & that to hym ... without the contrary canne be proued, and ... contrary can be proued: that the entent ... feoffour was that he should dispose it for ... as he would appoint than hath he the rent ... to a nother vse, and so one vse shoulde be ... vpon a nother vse, which is seldome ... and shal not be intended, till it be proued, ... sith no such matter is here expressed: me... ...th the rent shalbe taken to be to the vse ... that it is payed to, and the land in whose ... that it is appointed to hym for, not payinet ... land rent shalbe also to hym vse, howe the ... then, will conscience therein.

I thynke that as thou takest the lawe ... that conscience (in thys case) and the lawe ... one, for the lawe searcheth the same thing ... case to knowe the cause that conscience ... that is to say, the intent of the feoffoure ... Conscience I wolde move the further in one ... D. what is that. D. That ... the intent of the feoffoure, shalbe so muche ... ed in thys case, why it ought not also to be

to be as much regarded in the case that is
last Chapitre next before this where the
be condicionall, and giue the feoffour a
reentre, for me thinketh that though the
foure lacke in that case reentre for the
broken that yet after hys reentre he
sed of the land after hys ent to the vse of
whom the land was alligned by the
ture for lacke of payment of the rct
tent of the feoffoure shalbe taken to
that case as wel as in this. And I
me knowe thy minde what diuersitye
rest betweene them. D. Thou
nowe to a narowe diuersitie, but yet
where therin as well as I can. D.
syst, thou the we nie that diuersitie?
the we be we hold fles begin and why
lab hath be put I bse i thou reason as
I will with good will lay as me thinketh

Howe fles of land hyll began and
what lawe and the cause why so
much land is put in fle.

The .xxii. Chapitre.

Fles were reserued by a secondary
tion of the lawe of reason in this manner,
the generall custome of pleasure whereby
man knewe his owne good to hys neyg
was brought in among the people. It
reason that suche lawes and rooles as
had ought not to be taken to hym but

but if it be made it iudgeth of what effecte
thalbe that is to say that it thalbe voyde. & so
that maketh such reseruacio offendeth no lawe
thereby, ne breaketh no lawe therby, & therfore
the reseruacio in cõscience is good but if it were
plibite by statute that no man should make such
reseruacio, ne that no feoffme of truste should be
made but that al feoffmtes should be to the vse
of hi to whom possession of the lãd is gyuen the
the reseruacion of such vse ageinste the statute
should be voyd because it were ageinst the law
& yet such a statute should not be a statute ageinst
reasõ because such vses wer fyrst groũded & re-
serued by the law of reasõ, but it should repeale the
law of reasõ & should put away the considera-
tion where vpõ the lawe of reasõ was groũded be-
fore the statute made. And this to the other ques-
tion, that is to say, why so much lande hath ben
put in vse, it will be some what longe and per-
aduenture to some tedious to shewe al the causes
particulerly, but the very cause why the vse is
mayned to the feoffe notwithstãding his estate of
feoffmt or fine & somtime notwithstãding a re-
couery ageinst hi is al vpõ one cõsideracio & cau-
se & entent of the gift, fine, or recouery as is
aforesayd. D. Thoughe reason may lede
that vpõ a feoffmẽt a vse may be reserued to the
feoffoure by the intent of the feoffour agreed by
the fourme of hys gyft as thou hast said before
yet I maruayle howe such an vse may be reser-
ued ageinst a fine that is one of the highest
recordes that is in the lawe, and is taken in
lawe of so high effecte that it should make

put forfaiture though it were prohibite that
prouoked might not be graue i mortmayn. But
is put away by the statute of Richard the
And therefore they were made to destroye
lordes of warde, beneficis, purlotis, and
of
vnlawfull of theyr villeynes, but those
made a
put away by diuerse statutes made in the
of
to auoyde executions vpon statute staple
vpon purchace. Recognisaunce, a
ordeyned for that, that a man shall haue execu
of all such landes as any parson is seased of
or
of him that is to bonde at the time of
executed sued in the.xiii. yere of k. the. iii.
remayne feoffmentes, fynes, & retournes
for many other causes, in mind as many as
are before the said statutes. And vnto
they be put in vre as to put away
the cursitie & titles of dower. And other
for that landes shall not be put in
vpo a statute staple statute marchaut
recognisaunce, but such as be in the landes
recognisour time of the executed sued. And
time landes be put in vre right they
put in execucio vpo a writ of extendy
writes. And whether such vses be made
whole vse. yt may declare his will there
time for surety of dettes
mariage, & other bargayns, whether two
ties be the chief & principal causes why
vses to put in vse. If the landes in vse be
neyther in a Fomebone nor in
were against the purpose they shall not be

...ecucio by an Elegit sued vpō a recouere ...
...me me say & these be the very chief cause ...
...I neue remedye why so muche land standeth in ...
...ye same poth, and al the said vses be reser-
...ued to the intent of the patries vnderdame of
...agreed perawe the, & that many times a parties
...by agenst the wordes & entente, fine, or recō-
...pence, and that is done by the lawe of reason as
...is afore sayd. D. May not an vse be assigned
...to a straunger as well as to be reserued to the
...feoffour if the feoffour so appointed it vpon his
...feoffement. D. Yes sir inde, & in like wise
...the feoffe & that vpon a free gift without any
...fine or recompence if the feoffour so ap-
...point it no feoffment be made but ther a mā graūt
...by his deede that for three score pounde he shall
...to him & to his vse, in fee | the graūtee vpon
...he no recompence. ...
...there was an vse in fee before the gift
...be made as in meritage, gift, & wage &c
...the lād if he had it | notwithstād. D. And
...if a man being seased of lāde in fee graunt
...a parcell of his mere mocō without bargaine
...or sale that he tho thenceforth shalbe seased
...to the vse of the other, is not that graūt good?
...I suppose that it is not good, for as I take
...the lawe a mā can not commence an vse but by
...meane of seasō as vpō a bargaine or some other
...conueyance. D. I pray me commende vnto
...you both for your paines, for this hath
...geuen me great quietnesse thou puttest
...me out of one thole two cares that shall be me
...vsed in the xxi. Chapitre and in the xxii.

The xxiii. Chapitre

Chapytre of this present booke. ¶. I be
very good will.

¶ The diuersitie betwene two cases here after
followe, whereof one is put in the.xxi. Chapy.
and the other in the.xxi. Chapytre
of this present booke.

The xxiii. Chapytre.

¶ The firſt caſe of the ſaid two caſes is this.
¶ A man maketh a feoffment by dede indented
vpon a condition that the feoffee shal paye a certayne rent yerely to a ſtraunger. &c. & if he paye
it not, that it shalbe lawfull to the ſtraunger to en-
ter into the lande. In this caſe I ſayd before in
the.xxi. chapy. that the ſtraunger might not enter
because that he was not privey vnto the condi-
cion. But I ſayd that in that caſe the feoffee
maye lawfully reuoke by the firſt words of
the indenture because they impeche a clause
the lawe, & not the other wordes, that is to ſay
that the ſtraunger ſhould entre be force of the
condicion. And therefore I ſayd further that
if the feoffee had couenanted that he ſhould
paye the rent to the ſtraunger, though the entre of the
ſtraunger, through the entre of the feoffee were not
lawfull, yet the ſtraunger ſhould haue had the land to his
vſe, if he might haue entred by the lawe. And in
this caſe who I ſuppoſe that the feoffee maye lawfully
in that caſe to paye the rent. & that ſhould be the
lawe. The ſeconde caſe is this. A man maketh a
feoffe

a feoffefit in fee, & it is agreed vpō the feoffifit that the feoffe shal pay a perely rēt to a straūger, & if he pay it not that the straūger shal entre into the lād. In this case I sayd as it appereth by the sayed .xxi. chap. that if the feoffe pay not the rēt that the straūger should haue the vse of the lād though he made not by the rules of the law ent into the land, & the diuersite betwene the cases me thynketh to be this. In the firſt case it appereth as I haue sayd before i the said .xx. cha. that the feoffour might lawfully reent by the laūe for not payment of the rēt & than whē he entred vpō him he by that entre auoyded the fyrſt liuerey of seasō in so much that after the reent he was seased of the lande of lyke estate as he was before the feoffement. And so remayneth nothyng, wherupon the straūger might grōd any vse, but onely the bare graunt or ement of the feoffour whan he gaue the land to the feoffe vpon condicion that he should paye the rent to the straūger, and if not, that it should be lawful to the straūger to ent for the feoffefit is auoyded by the reent of the feoffoure as I haue sayd before, & as I sayde in the last chap. as I suppose a nude or bare graūt of him that is seased of land is not sufficient to beginne an vse vpon. D. A bare graunte maye chaunge an vse as thou the seife agreedſt in the laſte chapitre, why then maye not an vse as well be gonne vpon a bare graunt. H. whan an vse is i ēſe he that hath ſ vſe may of his mere mocion gyue it away if he will without recompēce as he might the lande if he had it i poſſeſſiō

but I take it for a ground that he cā not so be
gine an vse without a liuerey of lesse or by
vertuence of bargaine, & yf there is such a grou
in the lawe yt may not to bene it appereth that
hath be alway holde for lawe that if a man make
a dede of feoffment to a straunger and bequeth the
beede to him as his dede, that in that case he
to whome the dede is delyuered hath no title a
meddling with the lande afore liuerey of seasi
be made to him but only that he may entre and
occupye the lande at the will of the feoffour, and
there is no doubte layth that the feoffoure in
case is seased thereof before liuerey to the vse of
the feoffe. Also if one bargaine & sell and make a dede of
feoffment of two acres of lande that ye I two acres
intending to giue the to the feoffe graunteth liuery
of seasi of the one halfe & not in the other, in this
case is it comonly holde I holden that the dede is
voide to that acre where no liuery is made expres
if ye willyl the vse in same only that he may en
& occupie at will as is aforesaid, & there is no
doubte that liuery that the feoffe ought haue, the
vse of the other acre, for it an the paties thereto
had not the dede bene to al intentes & pur
appereth by the wordes of the dede & the feoffe
haue gone the landes to the feoffe, but for lack of
liuery of seasi the gift was voide & so me thinketh
it is here without liuery of seasi be made accor
ding. But in the seconde case of the saied two cases
the feoffe may not recouer for non payment of the
rent & so the first liuery of seasin continueth &
effecte in effecte, and thereupon the first vse may
well begynne and take effecte in the straunger

of

of the land when the rent is not payed vnto hi
according to the firſt agreement. And ſo me thin
that reaſon the firſt caſe the iſſe is determined be
cauſe the liuery of ſeiſin where vpon it commenced
is determined, & that in the ſecond caſe the iſſe of
the ſon taketh effect in the ſtraunger, for not pay
ment of the rent by the graūt made at the firſte
liuery which yet continueth in his effecte, & thys
is thynketh the diuerſite betwene the caſes
put. yet notwithſtanding the reaſon that thou
haſt made me thynketh that if a mā ſeiſed of landes
make a gift thereof by a nude promiſe without
any liuery of ſeiſin or reſpecte to hym made: &
graunte that he ſhalbe ſeiſed to his vſe: that
graūt that graūte be voide in the lawe that yet
notwithſtāding it muſt hold & ſtand good in cō
ſcience and by the iuſte of reaſon, for one rule of
the iuſte of reaſon is, that we may doe nothyng
againſt the trouth, & ſith the trouth is that the
owner of the graūte hath graūted that he that
is ſeiſed to the vſe of the other, that graūte muſt
nedes ſtande in effecte or els there is no trouth
in the grauntour. ℣. It is not agreinſte the
trouth of the grauntour in this caſe throughe by
a graūt he be not ſeiſed to the vſe of the other,
but it proueth that he hath graūted, that the
lawe will not warrāt him to graūt, wherefore
his graunt is voide. But if the grauntoure had
gone ferther and ſayd that he would alſo ſuffre
the other to take the profites of the landes with
out let or other interruption, or that he would
make hi eſtate in the lād vnto he ſhould be requi
red, then I thynke in thoſe caſes he were bounde

in

in conscience by that rule of the laine of n
that thou hast remembred to parfourme thi
trusted to be bounden by his promise for c
thould goe ageinst his owne trouth & agree
owne promise. But yet it shall make no
that case, nor he to who the promise is made
have no accion in the laine vpon that p
although it be not parfourmed, for it is ca
the laine a nude or a naked promise. And th
thinketh that in the first case of the said t
fes the grant is now auoided in the laine b
reserue of the feoffour, and that the feoff
not bounden by his graunt neyther in laine
conscience, but that in the second case he is
so that the fee passeth frō him as I haue
before. D. I hold me content with thy
cetie for this time, but I pray the shewe me
what more at large what is taken for a nude
tracte or a naked promise in the laines of
lād & where an accion may lye there vpō &
not. S. I will with good will lay as me
therin.

¶ What is a nude contracte or naked pro
after the laines of England, and wh
ther any accion may lye therupon.

The xxiiii. Chaptre.

FOr all it is to be vnderstand that contracte
grounded vpon a custome of the realme
the laine that is called (Jus gentium) & n
rectly by the laine of reason, for when al

...ndment neyed not to haue contracte, ...
...party was brought in, they were vnder ...
...it in al people. So that a man might haue ...
...neighbour that he had not of his owne, ...
...ould not be fauthfully but by his gifte, by ...
...of lending, chaung, or by the leake, bargaine ...
...which barganing sales be called contracte ...
...name by reason of the parties who agree, be- ...
...ing of goodes or landes for money or for ...
...recompence, but of money onely, for money ...
...is no contracte. Also a recond is partly a con- Donrordre
...tracte betweene the parties with diuers ... definito.
...couenantes, some ruling on the one parte & some ...
...on the other as if I graunte bi my lettres vnto ...
...my parte & it is couenaut agreed betweene ...
...the said parties that he shall go to Rome ...
...or to Calice & the said partie shall ...
...for the charge & bringing a certaine thinge &c. ...
...may be called a recond, but it is also a co- ...
...uenant & good accordery bpon it, howbeit it is ...
...much argued in the lawes of England what ...
...difference is betweene a contracte, a recond, a pro- ...
...mise, a gifte, a lone, or a pledge, a bargaine, & ...
...couenant, or such other, for the intent of the ...
...which haue the effecte of the matter argu- ...
...ed vpon the lettres, and a nude contracte is ... nuda pacta
...where a matter rudely a bargaine or a sale of ... sunto
...goodes or landes without any recompence ...
...geuen for it. As if I saye vnto you I sell ...
...you all my goodes and nothinge ...
...is agreed that the other shall geue or paye for ...
...them is a nude contracte, and as I take it it ...
...is not in the lawe and conscience, and a nude ...

of naked promise is where a man promiseth an other to giue him a cleine money such a day or to [illegible] him an horse, or to doe him such a seruice [illegible] nothing is alleaged for the money, for the [illegible] ding, nor for the seruice, these be called [illegible] promises, because there is nothing allea[illegible] they should be made. ❡ I thinke no accio[illegible] in these cases though the thing be not [illegible] ❡ Vo if I promise to a mother to bere [illegible] seruice vnobeg lafe yto such a time, & after [illegible] fuse to take them there lieth no action, [illegible] me for it, but if I take the [illegible] profers through my negligence, he may [illegible] action thereby. ❡ But what cause [illegible] that be leemed in the law of England in [illegible] mises that bee called naked or made [illegible] lawe per se they holde that they that [illegible] promise be bounde in obligacio to perfo[illegible] promise though they cā not be compelled [illegible] the law or not. ❡ The bookes of the [illegible] Spirituall treate litle thereof for it is left [illegible] determinacion of Doctours, & therefore I [illegible] the theme me seemeth none of the most [illegible] & then I shal set as the learned sone [illegible] maners of diuerse that be learned in the [illegible] the realme. ❡ To declare your matter [illegible] after the saying of Doctours it should [illegible] long time & therfore I will touch it [illegible] gine & vocabo to declare to here more [illegible] after. First thou shalt vnderstand that [illegible] promise that is called an abusion, & that is [illegible] mise made to god and he that doth make [illegible] home vpon a deliberate minde & entendem[illegible]

parfourn[illegible]

so that if he had knowē of ꝑ casualte at the ma-
king of the gyfte he wolde not have made
And also such gyftes if they that bid them
be honest, lawfull, & possible, & els they are
to be holde in offeringe though there be a co-
ser. And if the promise be good and warp a
though no worldly ꝑfite thal grow therby
that maketh the gyfte but only a spirituall
fyte as in the case before rehearsed of a p
made to an vniuersite, to a Cite, to the C
of such other and with a cause, as to the h
of god, other there it is moste commonly
that an accio vpō those gyftes lieth in the
Canon. ℟. whether doest thou meane
gyftes made to a vniuersite, to a Cite or
other as thou hast rehearsed before and
cause, as to the honoure of god or such
That the party shalbe bound by his gyfte
entended not to be bounde therby ye or no
I thinke nay no more than vpon gyftes
but to comon persons. ℟. And thus
lieth clerely that no accion can be upon
vpon such gyftes, for it is secrete in his
ofticience whether he stended so to be
nay. And of the entent inward in the heart
lawe can not iudge, & that is one of the
why the lawe of god is necessary (that is to
to iudge in warde thinges, & if an accio
in that case in the lawe Canon, than
lawe Canon iudge vpō the inward entent
hearte, which is not as me semeth. And
hope all vniuerse that bee lerned in the law
the realme all gyftes shall be take

comet, What is to saye: If he to whome the promise is made: home a charge by reason of the promise which hath also partourmed hyth in that he shall haue an accion for that thyng that was promised thoughe he that made the promise haue no maidly profite by it. As if a man saye to a nother. heale such a poore man of hys disease, or make an highe waye and I shall gyue you thus much, and if he doe it, I thinke an accyon lyeth at the common lawe. And more ouer though the thing that he shal doe be al spirytual yet if he partourme it I thinke an accion lyeth by the common lawe. As if a man saye to a nother, fast for me all the next Lent and I shall gyue the. xx. pound and he partourmeth it, I thinke an accion lyeth at the cõmon lawe. And likewise if a man saye to a nother, marrye my daughter and I will gyue the. xx. pound. Upon this principle an accion lyeth if he marrye hys daughter and in thys case he can not discharge the promise though he thought not to be bounde to hyr, for it is a good contracte, and he maye haue Quid pro quo, that is to say, the preferment of hys daughter for hys money. But in those promises made to an Vniuersite or such other as we haue remembred before, with such causes as we haue shewed, that is to say, to the honour of god and the encrease of lerninge, or such other like there the partye to whome the promise was made is bounde to no newe charge by reason of the promise made to hym but as he was bounde to before, there they thinke that no accõ lyeth ageynste hym thoughe he partourme not hys

hys promise, for it is no contracte, and
a wise cõsience muste hys iudge whether
tended to be bound by his promise or not. And
inclined it notwithstanding he offended for hys bil-
cion onely but if he entended to be bound,
he perfourme it notwithstanding is in hym
neth himself to be a lier, which is
wed by the lawe of god as by the lawe of
& ferthermore many that be lerned in the
of Englande hold that a man is as much
in conscience by a promise made to a
parson if he etended to be bound by hys
as he is in the other cases / thou hast re-
of a promise made to the church, or to the
or such other, for they say that as much
as if the byndyng of the one as of the other,
say that the entrouth is more to be pleased
the parson to whõ the promise be made. D.
what hold they if the promise be made for
pose as I promise the .xl. pounds for that thou
promised me such a house, lieth an accõ
They suppose nay, but he shalbe bound
to performe it wythout etent as is before
D. And if a mã promise to gyue a nother
in recompence for such a trespasse that
done hym, lieth an accion there. D.
pose nay, and the cause is for that such
be no perfyte cõtractes for a contracte is
ly when a man for hys money shall haue
of the other party & haue goodes of the
sure as at the time of the entrant as wt but if
be promised for a cause that is past by
recompence then it is rather an accõpte

Cho
Tho
Lau
Cou

contracte, but then the lawe is that vpon the one accompt for euery thinge that is promised in recompence must be paye or deliuered in hand for vpon an accompt there lyeth no action. D. But in the case of trespas wherefore holde they that he be bounde by his promise though he entended not to be bounde therby. S. They thinke not one more the in the other cases that be put before. D. In the other cases he was not bounde to that he promised but onely by vyrtue of his promise, but in this case of trespas he was bounde in conscience before the promise to make recompence for the trespas, and therefore it semeth that he is bounde in conscience to kepe his promise though he entended not to be bounden therby. S. Though he were bound before the promise to make recompence for his trespas yet he was not bounden to no summe in certayne but by his promise, and because that the summe maye be to much or to litle and not egall to the trespas and y^e parte to whome the trespas was done notwithstanding the promise is at libertye to vse his action of trespas if he will therefore they holde that he may be his owne iudge in conscience whether he entended to be bounde by his promise or not as he may in other cases, but if it were a det, then they holde that he is bounden to performe his promise in conscience. D. Howe if in this case of trespas he affirme his promise such an othe. S. Then they holde that he is bounde to performe it for fauing of his othe though he intended not to be bounden but if he entended to be bounde by his promyse, then they

saye that an othe nedeth not but to enioyne the
penalte for they say he breaketh the lawe of reaſo
which is that we may doe nothing agenſt the
trouth as well when he breaketh his promyſe
that he thought in his owne hearte to be bonde
by, as he doth whē he breaketh his othe though
the offence be not ſo great by reaſon of the per-
iury, more ouer to that thou ſayeſt that vpon
ſuche promiſes as thou haſte rehearſed before
ſhall lye an accion after the lawe Canon, herein
as to that in this realme there can no accyō lye
therein in the ſpirituall courte if the promyſe be
of a temporall thinge, for a prohibicion or a pre-
munire facias ſhould lye in that caſe .D.
That is marualle ſith there can no accion lye
therein in the kynges courte as thou ſayeſt thy
ſelfe. S. That maketh no matter, for though
there lye no accion in the kinges court againſt
executours vpon a ſimple contracte, yet if they
be ſued in that caſe for the det in the ſpirituall
court a prohibicion lieth. And in likewiſe if a
man wage his lawe vntruly in an accion of det
vpon a contracte in the kinges court, yet he ſhall
not be ſued for that periury in the ſpirituall court
and yet no remedy lyeth for that periury in the
kinges court, for the prohibicion lieth not only
where a man is ſued in the ſpirituall courts of
ſuch thinges as the party may haue his remedy
in the kinges court: but alſo where the ſpirituall
court holdeth plee in ſuche caſe where they by
the kinges prerogatiue and by the auncient cu-
ſtome of the realme ought none to hold. D.
I will take aduiſement vpon that thou haſte
ſayde

lyes in this matter till a nother time and I pray the nowe procede to a nother question.

The.xx.question of the Student.

The.xxv.Chapitre.

A Man hath two sonnes, one borne before espousels and the other after espousels and the father by his will bequeteth to his sonne & heyre al his goodes, which of these two sonnes shal haue the goodes in conscience. D. As I told in our first dialogue in latin the last chapitre the doubte of this case dependeth not in the knowig what conscience wil in the case, but rather in knowing which of the sonnes shal be iudged heyre (that is to say) whether he shalbe take for heire that is heyre by the spiritual lawe, or he that is heyre by the lawe of the realme, or els that it shal be iudged for him that the father toolke for heyre. S. As to that point admit the fathers minde nat to be knowen, or els that his minde was that he should be take for heire that should be iudged for heyre by that lawe that in this case it ought to be iudged by. And then I pray the shewe me thy mind therin, for though the question be not directly depending vpon that point to se what conscience wil in this case, yet it is right expedient for the wel ordering of conscience that it be knowen aft what lawe it shalbe iudged, for if it ought to be iudged aft the temporal lawe who should be heyre thogh it were ageist conscience if the iudges i the spiritual lawe should

iudge hi for heire ẏ is heire by the spirituall lawe, & I thinke they should be bounde to restitucio thereby, & therfore I pray the shew me thine opinion after what lawe it shall be iudged. D. Me thinketh that in this case it shalbe iudged after the lawe of the Church, for it appereth that the bequest is of goodes, and therefore if anye sute shalbe taken vpon the execucion of the will for that bequest it must be take in the spirtual court and when it is depending in the spirtual court me thinketh it must be iudged after the spirtuall lawe, for of the temporal lawe they haue no knolege nor they are not bounde to knowe it as me thinketh and more ouer not to iudge after it. But if the bequest had been of a chatel real as of a lease for terme of yeres or of a ward or such other the the matter shoulde haue come in debate in the kinges courte, & then I thinke the iuges there should iudge after the lawe of the realme & that is that the yonger brother is heire & so me thinketh the iudge of the courte shal make the byuerlite of the iugement. D. Of that might folowe a great inconuenience as me semeth, for it might be that in such case both chatels reale and chatels personel were in the will, and than after thine opinion the one sonne should haue the chatels personell, and the other sonne the chatels reale, and it can not be conueniently taken as me thinketh but that the fathers will was that the one son should haue all & not to be deuided. Therefore me thinketh that he shalbe iudged for heire that is heire by the comon lawe. And that the iudges spirituall i this

case

ule be bound to take notice what the common lawe is, for syth the thinges that bee in varyance be temporal, that is to say, the goodes of the father, it is reason that the right of them in thys realme shall be determined by the lawe of the realme. D. Some maye that be for the spirituall lawyers knowe not the lawe of the realme ne they can not knowe it as to the moste part of it for much parte of the lawe is in suche speach that fewe men have knowledge of it & there is no meanes ne familiarite of study betweene them that serue the sayd lawes for they be lerned in seueral places & all diuers waies and after diuers maners of techinges and in diuers speches and commonlye the one of them haue none of the bookes of the other, & to bind the spirituall iudges to gyue iudgement after that lawe that they knowe not, ne that they can not come to the knowledge of, it semeth not reasonable. D. They muste doe therin as the kinges Iudges muste doe when any matter cometh before them that ought to be iudged after the spirituall lawe whereof I put diuers cases in our fyrst dialogue in Englishe the. xii. chap. that is to say, they muste eyther take knowledge of it by their owne study, or els they muste enquire of the that be lerned in the lawe of the Church, what the lawe is and in like wyse muste they doe about it. In to doubte that some of them would be lothe to alter any such question in such case or to pronounce that they are bounde to gyue theyr iudgement after the temporal lawe and surelye they may rightly deme theyr conscience. D.

I suppose that some bee of opinion that they are not bounden to knowe the lawe of the realme, and verely to my remembraunce I have not heard that iudges of the spirituall lawe are bound to knowe the lawe of the realme.

M. And I suppose that they are not eueye bounden to knowe the lawe of the realme as to doe that in them is to knowe it whan the knowledge of it openeth the right of the matter that dependeth before them but that they be also bounden to knowe where and in what case thei ought to iudge after it, for in such cases thei must take the kinges lawe as the lawe spirituall to that pointe and are bounden in conscyence to folowe it as it may appere by yours cases wherof one is this. Two ioyntenaunts be of goodes and the one of them by his last will bequeth all his parte to a straunger and maketh the other ioyntenaunt his executour & dieth, if he to whome the bequest is made sue the other ioyntenaunt, vpon the legacie as executour &c. vpon this matter ye wed the iudges of the spirituall lawe are bounden to iudge the will to be void, because it is void by the lawe of the realme whereby the ioyntenaunt hath right to the whole goods bi the title of the survivour and is iudged to haue the goodes as by the first gift which is before the title of the will & muste therfore haue preferrement as the elder title, & if the iudges of the spirituall court iudge otherwise they are bound to restitucio, & by like reason the executours of a man that is outlawed the time of his death maye discharge them selfe

2 Iointenants de biens

in

ſ the ſpirituall court of ꝑ parſonnes of benefices becauſe they be chargeable to the king and yet there is no ſuch lawe of outlagary ſ the ſpirituall lawe. D. By occaſion of that thou haſt ſayde before I would aſke of the this queſtion. If a perſon of a Churche alien a portion of tithes according as the ſpirituall lawe hath ordeyned, is not that alienacio ſufficient though it haue not the ſolempnities of the tempozal lawes? M. I am in doubte therin if the portion be vnder the fourth parte of the value of the Church but if it be to the value of the .iiii. part of the church or aboue, it is not ſufficient, and therefore was the writ of right of tithes ordeyned, & if a writ of right of tithes it be iudged ſ the kinges court for the patron of the ſucceſſour of hym that alienedy becauſe the alienacion was not made according to the common lawe, then the iudges of the ſpirituall lawe are bounden to gyue theyr iudgement according to the iudgement gyuen in the kinges court. And in ithewiſe if a perſon of a Church agree to take a penciō for the tithe of a mille, if the penſion be to the fourth part of the value of the Church or aboue than it muſt be alyened after the ſolempnities of the kinges lawes as landes and tenementes muſt, or elſe the patrone of the ſucceſſour of him that alieneth may bring a writ of right of tithes and recouer in the kinges courte, and than the iudges of the ſpiritual court are bounden to gyue iudgement in the ſpirituall court accordyngly as is afore ſaid. D.

I haue herde ſay ꝑ a writ of right of tithes is

giuen by the statute of westminstre the second, and that speaketh only of ꝑsones and not of ꝑsons &c. where a ꝑson of a Church is wrongfully despoyled of his tithes and is let by an Indicauit to aske hys tithes in the spirituall court whan his patrone maye haue a writte of right of tithes by the statute that thou speakest of for there lay none at the common lawe for the ꝑson had there good right though he were let by the Indicauit to sue for hys right. But whan the ꝑson had no remedy at the spirituall lawe there a writt of right of tithes lay for the patron by the common lawe as well of pencions as of tithes, and some saye that in such case it laye of lesse than of the fourth part by the comun lawe but that I passe ouer. And the reason why it laye at the common lawe if the tithe or pencions were aboue the fourth part &c. was this by the spirituall lawe the alienacion of the ꝑsone with assent of the bishope and of the chapitre shall barre the successour without assent of the patrone, and so the patrone might lese his patronage and he not assenting thereto for his encumbent might haue no remedye but in the spirituall court and there he was barred wherefore the patrone in that case shall haue his remedye by the common lawe where the assent of the ordinary and chapitre without the patrone shall not let him as is sayde before. But where the encumbent had good right by the spirituall lawe there lay no remedy for the patron by the temporall lawe though the encumbent were let by an Indicauit, & for ꝙ cause was the sayd statute made

and

and ſtieth as well by the equitie for offringes and penſions as for diſmes. Than further I maruaile the rather that where the ſpirituall courte hathe holde ple of a temporall thynge that they ſhall iudge after the temporall lawe, and that ignorance ſhall not excuſe them in that caſe for by taking of theyr office they haue bounde them ſelfe to haue knowledge of as muche as belongeth to theyr office as all iudges be ſpirituall and temporall. But if it were in argument in this caſe whether the eldeſt ſonne ought to be a baſtarde because he is a baſtarde in the temporall lawe that ſhoulde be iudged after the ſpirituall lawe for the matter is ſpirituall. D.

Yet notwythſtanding all the reaſons that thou canſt make I can not ſee howe the iudges of the ſpirituall lawe ſhall bee compelled to take notice of the temporall lawe ſeing that the moſte part of it is in the frenche tonge for it were harde that euery ſpirituall iudge ſhoulde be compelled to learne that tong. But if the law of the realm were ſet in ſuch ordre that they that intende to ſtudye the lawe Canō might fynde howe a ſyghte of the lawe of the realme as they haue nowe of the lawe ciuil, and that ſome bookes and treatiſes were made of caſes of conſcience concerning thoſe two lawes as there be nowe concerninge the lawe Ciuil & the lawe Canō I would aſſent that it were right expedyt and than reaſō might ſuffre the beſt that they ſhould be compelled to take notice of the lawe of the realme as they be nowe holden in ſuch courtes as the lawe ciuil is vſed to take notice of that lawe. M.

Thou doſte ſeme to haue a ſyghte in the Canō lawe that thou canſt reaſō.

Spirituall men ought to haue knowledge of the lawes of the realme

Pe thinketh thine opinion is ryght good
reasonable but tyll such an order be take
are bounde as I suppose to enquire o
that be lerned in the comon lawe what the
is, and so to gyue theyr iudgement accor
they will kepe them selfe fro offence of c
ence, and for as much as thou hast well
ed my mynde in all these questions before
I praye the now that I may somwhat k
mynde in diuers articles that be writte
mers bookes for the ordering of conscience
the lawe Canon and Ciuyl, for me thinket
there be diuers conclusions put in diffi
as in the summes called Summa Ang
Summa rosella, and diuers other for the
order of conscience that be ageinst the law
this realme and rather blynd conscience th
gyue any light vnto it. D.
I praye the shewe me some of these cases.
D. I will with good will.

Whether an Abbot maye with conscie
psent to an abuasion of a Church
that belongeth to the house with
out assent of the conuent.

The .xxvi. Chapitre.

IT appereth in the Chapitre Cum dile
pus que fiunt a ppelatis the which Cle
is recited in the sixte called Summa Ang
in the title Abbas the .xx. viii. article that be
not without any custome or any speciall pr

...e helpe therein. D. Trouth it is ... is such a decretale, but they that be ... the lawe of England hold that decree ... not in this realme, and this is the ... why they doe holde that opinion. By the ... the Realme the whole disposicion of the ... and gooddes of the Abbey is the abbot ... for the tyme that he is abbot and not ... couent, for they be but as dead persones in ... and therfore the abbot shall sue and be ... without the couent: doe homage, seal- ... make lease and present to a benefice ... in his owne name, and they say farther ... temporalte cannot be taken fro him, but by ... of the Realme, and so they saye that the ... of that decretale exceded they power. ... they say it is not to be holden in con- ..., no more than if a decre were made that ... for terme of yeres or at lyst made by the ... without the couent should be tenne yeat- ... lease, and so they thinke that the abbot may ... case present in his owne name with- ... offence of conscience because the said decre- ... holdeth not in this Realme. D. What many ... of opinid that no man hath auctoritie to pre- ... right and collacion to any benefice with- ... but the Pope or that he hath his auc- ... therin derived fro the Pope, for they saye ... as muche as the Pope is the vycar ge- ... under God and hath the charge of the sou- ... all people ye be in the floche of Christes ... it is reason yt sith he cannot ministre to all ... that is necessary to al the people for they ... soule

Abbatis potestas

saule helth in hys owne parson that he
allone deputies for his discharge in th
And because patrones clayme to pre
Churches in thys realme by theyr ow
without tytle deryued fro the Po
saye that they usurpe upon the Popes
title and therefore they conclude that
the Abbot hathe title by the lawe of the
to present in thys case in hys owne
yet because that title is agreuse the
prerogatiue that that title nee yet the
of the realme that mayntayneth that
deth not inconscience. And they saye
it belongeth to the lawe Canō to deter
right of preintment of benefices for it is
spirituall and belongeth to the spirituall
cion as the deprauacion fro a benefice
they say the said decretale bideth in
though in the lawe of the realme it bind
As to thy first consideracion. I wolde
well agree that if the patrones of Ch
thys realme clayned to put encumbe
such Churches as should fall boyde of
tronage without presenting them to
or if they clayned that the Bishop should
such encumbent as they should present
any examinacion to see made of his
that behall, y that claim wer ageinst re
science for the cause that thou hathe re
but for as much as the patrons in thys
clayme no more but to present theyr
to the Bishope and then the Bishope
mune the abilite of the encumbent and

by the examinacion not able to haue cure
be the to refuse him & the patrō to pre-
sente that shalbe able, & if he be able the
bishop to admit him, institute hī, & induct hī.
this clause & their preheminences ther-
with good reason and conscience, &
the seconde consideracion it is holden in
lawes of the realme that the right of presen-
tac̄ō Church is a temporall enheritaunce
shall discende by course of enheritaunce fro
to heyre as landes and tenementes shall
be taken as an alles as landes and tene-
be and for the triall of the right of pa-
be ordeyned in the lawe byuers accōs
that bee wronged in that behalfe as
of right of aduoulon Alles of Daren
Quare impedit, and diuers other
without, tyme of minde haue been
in the hinges courten as thinges partei-
hys crowne and royall dignitie, & there-
lay that in this cale hys lawes ought
ordeyned in lawe and conscience. D.
me in variaunce whether he that is pre-
ted be able or not able by whome shall
ne be tried. M. If the ordynarie bee
pt to the accō it shal be tried by the ordi-
, and if he be partie it shalbe tried by the
politans. D. Than the lawe is more
able in that point than I thought it hath
the other point I will take aduisement it
another time, & I praye the shewe me the
in this point if an Abbot name hys vouch
in hys presentacion doth that make the
presentacion

preſentacion voyde in the law or is the preſentacion good that not withſtandinge? D. I thinke it is not voyde therfore, but the name of them is voyde and a thinge more thā nede for yf the abbot be diſturbed he muſt bring his accion in his owne name without the couent. D. Then I perceyue well that it is not vſed in the law of England, but that the abbot may name the couent in his preſentacion with him, and alſo take theyr aſſente whome he will preſent if he wyll, and then I holde it the beſt way that he ſo doe, for in ſo doinge he ſhall not offende nother in law nor conſcience. S. To take the aſſent of the couent whome he will preſent and to name them alſo in the preſentacion knowinge that he may doe otherwyſe but by law and conſcience if he wyl, is no offence. But yf he take theyr aſſente or name them with error in the preſentacion thinking that he is ſo bounde to do in law and conſcience, ſetting a conſcience where none is, and regardeth not the lawes of the Realme that wyll diſcharge his conſcience in this behalfe if he wyll ſo that he preſente an able man as he maye doe without theyr aſſente there is an errour and offence of conſcience in the abbot. And in lykewyſe yf the abbot preſent in his owne name, and therfore the couent ſayth that he offendeth conſcience in that he obſerueth not the lawe of the churche for that he taketh not theyr aſſent, than they offende in not goinge aboute to offende, that offendeth not. And therfore the ſure way is in this caſe to truſte the ſayd lawes of ſuche effecte as they

not toset an offence of conscience by breaking of the sayd decre whiche standeth not in force in this behalfe within this Realme.

¶ If a man finde beastes in his grounde doing hurt, whether may he by hys owne auctoritie take them and kepe them tyll he be satysfyed for the hurt.

¶ The.xxvii.chapiter.

This Question is made in the Summe called summa rosella in the tytle of restitucion that is to say restitucio.xiii.the.ix.article, and there it is answered that he may not take them and holde them as a pledge tyll he be satisfied for the hurte: but that he may take them & kepe them tyll he knowe who oweth the that he maye lerne against whom to have his remedy. And the law of the realme so in dede doeth.

Ac. Is hereby, for by the law of the Realme he that in that case hath the hurt maye take the beastes as a distresse and put them in a pounde and so it be within the same hyde, and there to them remayne tyll the owner wyll make him amendes for the hurte. D. What call ye them a pounde euerte. Ac. A pounde ouerte is not onely suche poundes as be comon in townes and lordshippes for to put in beastes that be distreyned, but it is also euerye place where they may be in lawfullye not manour the owneour an offender for they be there, and that it be there also that the owner

pound short

owner maye lawefully giue the beastes meate and drinke while they be in pounde. D. And if they dye in pounde for lacke of meate whose leoperdye is it. M. If it be such a pounde ouerte as I speake of, it is at the peril of him that oweth the beastes for that he hath had the hurt that he at liberte to take hys amendes for the trespas if he will and if it be not a lawfull pound then it is at the peril of hym that distrayned, and so it is if he dryue them out of the shyre. And they dye there.

D. I put case that he that oweth the beastes offer sufficient amendes and the other will not take it but hepeth the beastes still in pounde, maye not the owner take them out. M. No for he maye not be hys owne iudge. And if he hath an accion ageinst hym for hepyng of the pound, but he must sue a replevin to his beastes deliuered him out of pounde and thereupon it shall be tryed by .xii. men whether the amendes that was offrede were sufficient or not, and if it be found that the offer was not sufficient: than he that hath the hurte shall haue such amendes as .xii. me shal aſesse. And if it be found by the .xii. me that the amendes were sufficient, that he that refused to take it haue no punishment for his refusell and for kepynge of the beastes in pound after that time. M. I holde no, but that he shall pelde damages in the replevin because the wrong is tried ageinste him. D. I put case that the beastes after that returned dye in pound for lack of meate at whose leoperdye is it than. M. At the leoparbye of him that

and

wyth the beastes as it was before for he is bound
to his peryl by reason of that wrong that was
done at the beginnyng to see that they have meat
as long as they shalbe in pounde unles the lordes
will come to deliuer them. and he refuseth it, for
after that time it will be at his ieopardy yf they
dye for lacke of meate and the damages shall be re-
couered in an accion brought vpō the statute for
distreyning the kynges wyll.

¶ whether a gift made by one vnder
the age of .xxi. yeres be good.

¶ The .xxviii. Chapter.

¶ Appereth in Summa angelica in the title
bonacio prima the .vii. article that a man be-
fore the age of .xxi. yere may not geue, without it
be with the auctoritie of his tutour. Is it not so
likewise at the common law. D. The age
of infantes to geue or sell theyr landes & goodes
by the law of England at his .xxi. yeare of above
that after that age the gift is good, and before
that age it is not good, by whose offer soeuer it be
done it be for his meat and his profite or appa-
rell. or that he do it as executour in performance
of the will of his testatour or in some other lyke
cases that needeth not to be rehearred here, and
that age must be obserued in this realme in lawe
and conscience and not the fyfte age of fyue and
twenty yeare. D. I put case it were ordeyned
by a decree of the churche that yf any mayde
by her proper bequeth goodes to an other, and

willeth that thei shalbe delyuered to him at his full age and that in that case fyue and twenty yere shalbe taken for the ful age, shal not that decre be obserued and stand good after the lawe of England. D. I suppose it shal not, for though it belong to the church to haue the probate & the executions of testamentes made of goodes and chatels except it be in certayn Lordshippes and seignories that haue them by prescripcion, yet the church may not as it semeth determine what shal be the lawful age for any persō to haue the goodes for that lieth to the king and his lawes to determine, and therfore yf it wer ordayned by a statute of the realme, that he should not in such case haue the goodes till he wer of age of .xxi. yere, that statute wer good and to be obserued as well in the spirituall lawe as in the lawe of the realme, and if a statute wer good in that case, that a decre made therof is not to be obserued, for the ordring of the age may not be vnder two seuerall powers, and one property of euery good lawe of man is that the maker excede not his auctoryte, and I thinke that the spirituall Iudges in that case ought to iudge the full age after the lawe of the realme, seing that the matter of the age concerneth temporall goodes, and I suppose farther that as the king by auctoryte of his Parliament may ordayn that al willes shalbe voide and that the goodes of euery man shall be disposed in such maner as by statute should be assigned that more ouer he may appoint at what age such wills as be made shalbe performed. D. Whilest thou thus that the king may take away the power of the ordinary

ordinary that he shall not call executours to ac-
count. &. I am somewhat in doubt therin
but it seemeth that yf it might be enacted by Sta-
tute, that all wills shoulde be voide as is aforesaid
that than it might be enacted that no man should
haue auctorite to cal none to accompt vpō such
wills but such as the statute shall therin appoynt
for he that may do the more may do the lesse, not
withstanding I will nothing speake determy-
nately in that point at this time, me I meane not
that it were good to make a statute that all wylls
shoulde be voyde, for I thinke them right expedi-
ent, but mine intent is to proue that the comon
law may ordayn the tyme of the full age, as well
as wills of temporall thinges as otherwyse, and
also that will shalbe made. & no if it may so do the
much stronger it belongeth to the kinges lawes
as interpretate wills concerning temporal thinges
as well whan they come in argument before the
kinges as whan they come in argument before spi-
rituall iudges, and that they ought not to be iud-
ged by seuerall lawes (that is to say) by the spiri-
tuall iudges in one maner, and by the kinges iud-
ges in an other maner.

¶ If a man be conuict of heresy before the ordinary, whether his goodes be forfeited.

¶ The xxix. Chapter.

IT appeareth in Summa angelica in the title Donacio prima the xiii. article, that he that is

an heritie he may not make executors, for in ye lawe his goodes be forfeit, what is the lawe of the realm therin. ℣. If a man be conict of heresie & and abiure he hath forfet no goodes, but if he be conict of heresy & be delivered to lay mens hands, than hath he forfeit all his goodes that he hath at that time that he is delivered to the, though he be not put in execucio for the heresy, but his landes he shal not forfet except he be dead for the heresy, & than he shall forfeit the to the lordes of the fee, as in case of felony, except they be holden of the ordinary, for than the lord shall have the forfeiture, as it appeareth by a statute made the xxvij. yere of kyng Henry the fifth, the. viij. chapter. ℣.

We thinketh that as it belongeth only to the churche to determine heresies, that so it belongeth to the church to determine what punishment he shal have for his heresy, except death which they may not be iudges in, but if the churche deme that he shal therfore forfet his goodes me thinketh that thei be forfeit by that decree. ℣.

May heresy for they be temporall and belong to the iudgement of the kynges court, and I trow the ordinary might have set no fyne vpon one emperched of heresy til it was ordained by the statute of Henry the. iiij. that he may set a fyne in y^e^ case it be so cause, and than the kyng shall have that fine as in the sayd statute appereth.

¶ Where diuers patrons of an aduowson and the church voideth, the patrons have in their presentees, whether the Bishop shall have libertie to present which of the ecumbents that he will or not.

¶ The

¶ The xxx. Chapter.

This question is asked in Summa rosella in the title patronus fol. ii. article and there it is answered by the better opinion that he may present to the first clerke he will, without the matter of the said lame, saving by the right of the tenure the Bishop in such case may receive a stranger to which the patrons agree not, as in the same chapter patronus the xv. article.

It is said that he must be preferred y hath y most merites and hath the more part of the patrons, and yf the noumber be equall, that than it is to consider the merites of the patrons and yf they be of like merite, than must the Bishop commande them to agree and to present agayn. And yf they cannot yet agree than the libertye to present is geuen to the Bishop to take which he will and if he may not yet present without grete trouble than shall the Bishop order the church in the best maner he can, and if he cannot order it, than shal he suspend the church and take away the reuenues to the reuenues of the patrons, and if they will not so be ordered, than must he aske helpe of the temporalitye, and in the .xv. article of the said title patronus. It is asked whether it is expedient in such case that the more part of the patrons agree hauing respect to al the patrons or yf it suffise to haue the more part in quantitie of y same part as thus. There be .iii. patrons two presente one clerke, the third presenteth another: and the fourth another, he that is presented by .ii. hath not the more part in quantitie of al patrons for they be equall, but he hath the more part hauing respect

to the other parcenors, to this question it is
and therein that lyeth the preferment is more
the that he of eldage e there is requisite the more
part lastly refuseth to all the colage, of els every
preferreth first eldest as eldest to be the
name the patronage of their patronage, e then
sufficeth to have the more part in respect of the
ther parts, both not the law of England
to these diversities. ¶. No verily. ¶. no
ryde than shall be taken in the law of England
the patrons may in their preferments. ¶. No
the lawes of England this ryde shall be taken
that in consideration of seniorities in eldage
patronage, e that they in preferment the
ty is not bounden to admit none of their
neither the more part nor the least, and if the
enemenes pass of that agre that he may prefer
the least, that he may not prefer neither the
eschete, for if he do that may agre e bring a
impedit against him. e remove his clarke, e so
ordinary shall as patron bour. And if the
have the patronage by discit as copercners
to the ordinary bound to admit the clarke of
eldest sister for the eldest shall have the preferm
in the law and if the will, e she at the next
sister the next sister shall present and so by turn,
one sister after another, til all the sisters or their
heires have presented, e then the eldest sister
begin again, e this is called a preferring by turne
e it holdeth always between copercners of an
advowson, except they agre to present together or
that they agre by deposicio to present in some o
ther manor, e if they do so that agreement must
bee

but this must be alwaye except that if at the first
presentace that shalbe after the death of the elder
another, the king have the warde of the younger
by prerogatyue that shall the lying by his prerogatyue
shall lose the presentment. And at the next avoid-
ance the eldest sister ende so by course. What it is
to understande that if after the death of the elder
the church voideth & the eldest sister pre-
sented together with another of the sisters, & the
other sisters every one in theyr own name as to-
ward that in that case the ordinary is not bound
to receyue none of their clarkes but may suffer
the church to ren into the lapse, as it is sayde be-
fore. For he shall not be bound to receyue the clarke
of the eldest sister but where the presenteth in her
owne name. And in this case where the patrones
hath presentment the church is not properly sede
vacante so that the ordinary should be bound at his
perill to direct a writ to inquere (be iure patronat:)
for that writ lieth where two present by se-
uerall titles, but their patrone present all in one
title, & therfore the ordinary may suffer it to passe
the writ into the lapse, & this manner of present-
ment must be obserued in this realme in lawe &
conscience.

How long tyme the patron shall haue to present to a benefice.

The xxxi. Chapter.

This question is alleged in Summa angelica in
the title Jus patronatus the .xxvi. article, and
there it is answered that if the patron be a lay man
first he shall haue .iiii. monethes, and yf he be a
clarke he shall haue syxe monethes.

S. And by the common law he shall have fyre monethes whether he be a lay man or a clarke. I see no reason why a clarke should have more respyte than a lay man: but rather the contrary.

D. Fro what tyme shall the fyre monethes be accompted. S. That is in diuers maners after the maner of the voydance, for if the church voyde by death, creacion, or cession: the fyre monethes shalbe coumpted fro the death of the incumbient, or fro the creacion, or cession, where the patron shalbe compelled to take notice at his perill, and if the voydaunce be by relignacion or deprivacion, than the fyre monethes shall begyn when the patron hath knowledge geuen hym by the Bishop of the relygnacion or deprivacion.

D. What if he haue knowledge of the relignacion or deprivacion and not by the Bishop but by some other, shall not the fyre monethes begyn than fro the tyme of that knowledge. S. I suppose that it shall not begin til he haue knowledge geuen hym by the Bishop. D. In cession is also a cause of voydaunce how shall the fyre monethes be reckoned there. S. There is no lycon be made but the patrons shall haue knowledge, and it must be appointed who shall present after that lycon, that is to say, one of the or both, either iointly or by turne one after another as the agreement is vpon the lycon, & yet the patron is driuen to the auoidaunce and is assygnaunt of it, the fyre monethes shalbe accompted fro the agreement. D. I see well by the reason that thou hast made in this chapter, that assygnaunce lyeth in the law of England

and so in some of the said ordynaunces it shall
[illegible] the patrons as it appeareth by the wri-
[illegible] shone, and in some it shall not, wherefore
I pray thee shew me some what where and how
[illegible] in the laws of England and where not
after thine opinion. &c. I wyll with good
will hereafter do as thou desyrest if thou put me in
remembraunce therof. But I would yet moore
[illegible] somewhat further in such questions as I have
[illegible] before touchyng the differences be-
[illegible] the lawes of England and other lawes
[illegible] there be many moo causes therof that as me
[illegible] have tyght great neede for the good order &
[illegible] of many persons to be reformed & to
[illegible] in to one ordre both amōg spirituall &
[illegible], as it is in the case wher doctours hold
[illegible] that the statute of lay men that restrayne
[illegible] to gyue landes to the churche shoulde be
[illegible] and they say farther that if it were prohibited
[illegible] that no gift should be made to forreine
[illegible] a gift made to the churche should be good
[illegible] say that the inferiour may not take away
[illegible] of the superiour and this saying is
[illegible] against all the statutes wherby it is prohi-
[illegible] landes should not be geuen in to mort-
[illegible], and they say also that by quelles & gyftes
[illegible] church muste be determyned after the laws
[illegible] and not after the lawes and statutes of
[illegible], and so they regarde much to whom the
[illegible] is made whether to the church or to make
[illegible], or to common persons, and beare more fa-
[illegible] to gyftes to the churche than to other, and
[illegible] of the realme beholdeth the thyng that is

A [illegible]

If a man be excommenged whether he may
any cause be assoiled without making

The xxxii. Chapter.

In the summe called Summa rosella in
Title absolucio quarta the second article

that he that is excommunicate for a wrong
be able to make satisfaccion ought not to be
but he to satisfy, and that the offende
be absolue vpon. but yet nevertheles he is ab-
and if he be not able to make amendes
must yet be absolued, takinge a sufficient gage
satisfy if he be able hereafter, or els that he
an othe to satisfy if he be able. And thes
in many thynges hold not in the lawes
England. D. I pray the shew me wherin
of the realme barieth therto. M. If
be excommunicate in the spirituall court
trespasse, or such other thinges as belong
temporall crowne and to his royal dignitye,
he ought to be absolued without makinge
satisfaccion, for the spirituall court exceded
power in that they held yn thole cases
the party yf he wolde may therupon haue a
writte facias as well against the party
him as against the iudges therfore in
case they ought in conscience to make abso-
without any satisfaccion, for they not only
the party in calling him to answer before
of such thinges as belong to the lawe of the
but also the kinge, for he by reason of such
may leese great aduantages by the reason of
originalls, iudicialls, fines, amerciaments
such other thinges as might grow to him yf
had ben take his courtes according to his
according to his saying. it appereth in di-
statutes that if a man lay violent handes vpon a
bond, that for the breakinge awaye shall
made in the kinges courte, and for the laying

The xxxii. Chapter.

...that he that is excommunicate for a wrong ...be able to make satisfaccion ought not to be ...ed but he do satisfy, and that the offende ...be assoyle vpon. but yet neuertheles he is ab... and if he be not able to make amendes ...he must yet be assoyled, taking a sufficient gage ...satisfy if he be able hereafter, or els that he ...an other to satisfy if he be able. And thyse ...ynges in many thynges hold not in the lawes ...England. D. I pray the shew me wherin ...ynes of the realme varieth therfro. S. If ...man be excommunicate in the spirituall court ...for tythes, or such other thinges as belong ...to spirituall ministers and to his ropal dignitye, ...he ought to be assoyled without making ...any satisfaccion, for the spirituall court erected ...by prescription in that they held pleas in those cases ...the party plaintyf may thereupon haue a ...writte of excommunicato capiendo as well against the party ...defendant as against the iudge therfore in ...such case they ought in conscience to make absolucion ...without any satisfaccion, for they not only ...vexe the party in calling him to answer before ...them of such thinges as belong to the lawe of the ...realme, but also the kyng, for he by reason of such ...excommunicacion may leese great aduantages by the realme ...as wardes, escuages, issues, fines, marriages ...and such other thinges as might grow to him yf ...they had ben take[n] his courts according to his ...writtes according to his saying. it appeareth in di... ...statutes that if a man lay double bailes vpon a ...distresse beast he that for the double bailes shall ...make in the kynges court, and for the saying

of violent handes vpon the clerke amendes
he made in the court christien. And therfore
iudge in the court christien wolde answere
party to paye damages for the beatyng, he
gayll that statute, but denyes that a man
commenged for a thyng that the spirituall
may award the party to make satisfaccion
for the not inclosing of the churchyard, or for
apparellyng of the church conuenyently. Wher
thynke the party must make refutacion of
sufficient caution yf he be able or he is
but yf the party offer sufficient amendes
haue hym absolucyon, and the iudge
make hym his letters of absolucion yf the
commengement be of record in the
court than the kyng may write vnto the
tuall Iudge commaundyng hym that he
the parties his letters of absolucion vpon
a contempt, & yf the said excommunicacio
of recorde in the kynges court than the
may in such case haue his accion against the
spirituall for that he wolde not make hym
letters of absolucion but yf he be not
if he be not able to make satisfaccion and
the iudge spirituall will not absoyle hym, what
kynges lawes may bode in that case I am
what in doubt, and wyll not much speake
at thys tyme, but as I suppose he may
haue his accion in that case for the not
hym as where he is absoyled & that the iudge
not make hym his letters of absolucion, and
suppose the same law to be where a man
cursed for a thyng that the iudge had no

...rle him in, as for det, trespas, or such other
...There he may haue other remedies as a
...munire facias or such other, and therfore I
...pose the other accion lyeth not for hym. D.
...judge and the party may be dead, and than
...premunire lyeth, and though they wer alyue
...wer condemned in a premunire, yet that
...not auoyde the excommengement, & ther-
...I thinke the accion lyeth specially yf he be
...delayed of actions that he myght haue in
...ges court yf the sayde excommengement
...been.

Cwhether a prelate may re-fuse a legacye

The.xxxiii.Chapter.

...T is moued in the sayd sumune named Rofel-
...in the title alienacio.xx.the.xi. article whe
...a prelate may refuse a legacy, wherin dy-
...opinions be recited there, which as me thi-
...haue nede after the lawes of the realme to
...more plainly declared. D. I pray the shew
...what the law of the realme wyll therin.
...I thynke that euery prelate and sufferayn
...may only sue and be sued in hys owen name,
...Abbottes, Priours: and such other may
...refuse any legacye that is made to the house, for
...legacye is not perfect tyll he to whom it is
...assent to take it: for els yf he myght not re-
...it he myght be compelled to haue landes
...ceiue he myght in some case haue great losse
but

but than yf he intende to refuse, he muſt as ſone
as hys tyme by the legacye falleth retine
take the profyttes of the thyng bequeth
he once take the profyttes therof he ſhall
ter refuse the legacye: but yet hys ſucceſſour
yf he will refuse the takyng of the profyttes
the houſe fro yeldyng of damages or fro
ges of rentes yf any ſuch be. and tyke law
remaynder as is in legacy, for though
tate of a remaynder and alſo of a bendſe
man lay the freholde is caſt vpon hym by
whan the remaynder or bendſe falleth
in his liberty to refuse the takyng of the
and to refuse the remaynder if he will as he
dooe of a gyft of landes or good for yf a
made to a man that refuſeth to take it,
is voyde, and yf it be made to a mannes
abſent the gyft taketh not effect in hym
aſſent: no more than yf a man diſcaſe
nother mannes ſe, he to whoſe ſe the
is made hath nothyng in that land ne is
ſeaſour till he agree. And to ſuch diſcaſe
gyftes an Abbot or Priour may diſagree as
as any other man, but after ſome me a
a bendſe or remainder that is made to the
to the Deane & Chapitre nor a Deane &
pitre of a diuice or remainder made to
the maſter of a colage of ſuch a bendſe or
der made to him & to his bretheren, may not
gree without the Chapitre or bretheren for
thyng of ſuch landes as he hath with the
Chapitre ne the Deane nor maſter, of ſuch
as they haue with the Chapitre or bretheren

...ueyer without the Chapitre & bryth yen, &
... lawe say that if the Deane or another wol
... plicitame in the lawnes that thei haue by
... or remembrer that plicamour, without
... apitre or bryethren is void. And therfore is
... in the lawe that if a Bishop be vouched
... & the tenaunt bindeth hym to the
... by reason of a leale made to hym by the
... & by the Deane and the Chapitre yelding
... that in that case the Bishop may not dys-
... in that reuercion without the assent of the
... and Chapitre. But yet if a reuersion wer
... to a Deane and a Chapitre & the Deane
... the graunt is voyde & so it appeareth that
... may refuse to take a gyft or graunt of
... or goodes or of a reuercion made to hym &
... Chapitre and that yet he may not dyslagre
... remaynder or demise, and the diuersity is be-
... the remaynder and demyse he cal vpon hym
... any assent, wherunto nother the Deane
... Chapitre by themself may in no wise dis-
... without the assent of the other, but a gift or
... is not good to them without they both as-
... in such gifftes as I suppose an Infant
... dysagre as wel as one of full age, but yf a
... coueri dysagre to a gift and the husband
... that gyft is good. D. what if the lantes
... case of a man and his wyfe be charged
... damages or be charged with more rent that
... is worth, and the husband dye shall the
... be charged to the damages or to the rent.
... thinke nay yf the wyfe refuse the occu-
... of the grounds after her husbandes death,
and

Deane and
Chapitre doo

Infant not
bounde

¶ I thinke the same lawe to be if a leafe be made to the husband ¶ to the wife yeldig a greater rent than the land is worth ¶ the wife after the husbandes death may refuse the leafe to saue her fro the payment of the rent. ¶ so may the successour of an Abbot. And if the husband in that case ouertime the leafe and than make his executours and dye, whether they may his executours in lyke wyse refuse the leafe. ¶. If they haue goodes sufficient of their testatour to pay the rent I thynke they may not refuse it, but yf they haue no goodes sufficient of theyr testatours to pay the rent to the ende of the terme. I thynke yf they relynquysh the occupacyon they may by specyall pleadyng discharge themself of the rent and the leafe, and yf they doe not they may lyghtly charge themself of theyr owen goodes. And yf a leafe be made for terme of life the remainder to an Abbot for terme of the lyfe of Johan at stile, reseruyng a greater rent than the lande is worth, and after the tenant for terme of lyfe dyeth the Abbot may refuse the remaynder for the cause before rehersed and in case that the Abbot assent to the remaynder whereby he is charged to the rent during the time that he is Abbot, ¶ after he dieth yf he haue relynquyng the layd Johan at stile, in that case his successour may discharge hym selfe by refusyng the occupacion of the lande as is aforesayd. But I thynke that yf such a remaynder were made to the deane ¶ to the Chapitre, ¶ the deane agreeing without the assent of the Chapitre that in that case the deane and the Chapitre may afterwarde disagree to the remaynder, and that the act of the

the assent of the chapitre shall not charge
the chapter in that behalf, and thus it appereth
clerly the meaning of the lawe chapitre and
article in the lawe summe be, that a prelate may
not disagree unto a legacie for harming of the
house yet he may after the lawes of the Realm
disagree thereto where it should hurt his house.
As if in a Precipe quod reddat there be but
one tenaunt be he spirituall or temporall, and he
vouche by way of bicliaymour in such case where
the law differeth by the law, there the land shall
dwelle in the demaundaunt, and if there be two
tenauntes then it shall dwelle in his felowe, if
he will take the whole tenauncie upon him or
else it shall dwelle in the demaundaunt. But if an
abbot or a lay man refuse the taking of the pro-
fites and shew a speciall cause why he should
not have it if he did assent and be thereby dis-
charged as is lawe before. In whom the lande shall
then dwelle it is more doubt wherof I will no
further speake at this tyme. Also thus it appe-
reth by diverse of the cases that be put in this
chapter that he that is ignoraunt in the lawe of
the Realme, shall lacke the true iudgement of
conscience in many cases, For in many of these
cases that that may be done therin by the lawe
maie also be observed in conscience. &c.

Whether a gift made under a condition be
voyde if the condicion onely breche the
condicion.

The .xxxiiii. Chapitre.

Summa rosella in the title attornato, the
article is alled this question whether a

gyfte made vnder a certayne forme maye be
moyded or reuoked by cause the prelate or
rayne onely dyd breke the forme, and it is then
answered that it may not for that the dede
the prelate onely ought not to hurt the
and if those wordes vnder a maner be vnder
stande of a gyft vpon condicion as they seme
be, than the sayd solucyon holdeth not in
Realme nether in law nor conscience. D.
what is than the law of England if a man
feffe an Abbot by dede indented vpon cond
that yf the Abbot pay not to the feffoure a
tayne some of money at suche a day that then
shalbe lawfull to the feoffoure to reentre, and
at that daye the Abbot faylety of hys pay
may the feoffer lawfullye reentre and put
the Abbot. S. yea verelye for he hath
ryght to the land but by the gyft of the feff
and his gyft was condicionell and therfore
the condicion be broken it is lawfullye by
law of England for the feoffoure to reentre
to take hys lande agayne and to holde it as
hys fyrst estate by wrighe reentre after the
wes of the Realme he disproueth the fyrst
sey of season and all the meane actes done
twene the fyrst feoffement and the reentre
it forceth lytle in the law in whome the defa
be that the condicion was not performed
ther in the Abbot or in his conent or in bo
or in any other person what soeuer he be
kept it be in the feffour him self. And it is grete
inquerisitie betwene a clere gyft made to an Ab
bot wythout condicyon, and where it is made

...ith condition, for when it is made without di-
...ction the acte of the Abbot onely shall not by
the comon lawe bitherite the house but it be in
very few cases, but yet vpon dyuers statutes
the sufferaunte of the Abbot only may bitherite
the house as by lyes cesey, or by lenenge de la
... vpon a house against the statute therof
... in whiche case the house therby shall lese
... some say that by the comon law vpo
... disclaymour in assyse a writ of right of di-
...mour lyeth, but if the gift be vpon condycyo
... neither with law nor conscience that
... should have any more perfite or sure
... was geuen vnto hym, and therfore
... say that was made to the house vpon
... so that estate may be anoyded for not
... of the condicion and so thynke be-
... say is to be holde in thys
... lawe and conscience, and that
... of the churche to the contrary bind
... case. But if landes be geuen to an
... and to hys conuente the intent to fynde
... , or to gyue certayne almes to poore
... though the intent be not in those cases
... yet the brother nor hys heyres may not
... be returned to reentre by expresse
... in the wordes when he sayth to the
... intente to fynde a lampe or to gyue almes &c.
... implied no reentre, ne the foundour nor hys
... that haue no remedy in suche cases ones
... be within the case of the statute of westm.
... the secunde that giueth the Commune be
... remedie.

nota bene
Donne da
... ...
... ...
(...
... ...
... ...
...

whether a couenaunt made vpon a gyfte
to the churche that it shall not be alie-
ned(be good.)

The xxxvi. Chapter.

In the sayd summe called Summa rosella in
the sayd tytle alienacio. the xxii. article is
kepte this question, whether a couenaunt made
vpon a gyfte in the churche that it shall not be
alienede be good. And the same question is han-
ded agayne in the sayd summe called rosella in
the tytle condicio the fyfth article and in Ange-
lica, in the title Donatio primo. the .ix.
iii. articles, and the intent of the question
is whether notwithstanding that the condicion
be good to some alienacions, whether that yet it
be good to restrayne alienacions for the reuoca-
tion of them that be in captiuite vnder the in-
deles or for the greater auauntage to the house
and though the better opinion be there that the
condicion may not be broken for redemption of
them that be in captiuite: yet it is in many
hole opinion that it may be sayd for the grea-
dauntage to the house, for it is sayd there
it maye not be taken but that the intente of
giuer was so, and therfore they call the condi
that prohibiteth it to be false (condicio turpis)
that is to say a lyle condicion, wherfore they
gaythe if not: but veruis as I take it is a cond
cion may restrayne any women of alienacion
it shall as well restrayne alienacions for the
causes before reherced as for any other cause
though me thinketh that that condicio is good

and

...the lawes of the realme that vpon gyftes
...of the churche reasonably alienations: yet I
...shall for the one reason that is made to the con-
...trary that is this. There is a cleare ground in
...the lawe that if a feoffement be made to a comon
...person in fee vpon condition that the feoffe shall
...not alien to no man that condition is voyde be-
...cause it is contrary to the estate of a fee simple
...for howe him that hath that estate that he should
...not alien if he wille and some say that an abbot
...hath by lawe to him and to his successours
...as high and as perfite a fee simple as hath
...any man that hath lawe to him and to his
...heires, and therefore they say that it is as well a-
...gainst the lawe of the realme to prohibit that
...the abbot shall not alien as it is to prohibit a
...man therof, and though it be therin true as
...they say as to the highnes of the estate: yet me
...thinketh there is great diuersite betwene the
...cases concerning their alienations, for when lan-
...des be given in fee simple to a comon person the
...intent of the lawe is that the feoffe shall have
...power to alien, and if he do alien it is not a-
...gainst the entre of the lawe ne yet against the in-
...tent of the feoffer, but when landes be given to
...the abbot and to his successours, the entente of
...the lawe is and also of the giuer as it is to pre-
...sume that it should remayne in the house for e-
...ver, and therfore it is called mortmayne, that is
...to say a dead hand as who saieth that it shall abide
...there as long as a thing dead is to the house. And
...therfore as I suppose the lawe will suffre that
...prohibition to be good that is made to restreyne

rendre nor against the lawe is to do it

mortmayne a dead hand

that such mayntenaunce should not be alleged and that yet it maye prohibite the same condicion to be made vpon a feoffement made in fee. Sende to amende to his heyres for that in the mortmayne the mosse free and the mosse gyuen shall be taken in the lawe. But the lawe suffreth suche a condicion to be made vpon a gyft in tayle because the statute prohibiteth yt no alienacō should be made therof. And then as the lawe suffereth suche a condicion vpon a gyft in mortmayne, that he may saye, that it shall not be alienedto be good, then it iudgeth the condicion also accordynge to the wordes, that is to saye, if the condicion be generall that they shall alienate to no man as this case is that it shalbe taken generally accordynge to the wordes, and it shal not be taken that the intent of the gyuer was otherwyse then he expressed in his gyft thoughe percase if he were asked himselfe and the question were asked him whether he wolde be contented it should be alienated for the sayde two causes or not, he wolde saye, but whan he is dead no man hath authorite to interpretate his gyfte otherwyse then the lawe suffreth, ne otherwyse than the wordes of the gyfte be. And if the condicion be suffered that is to saye, that the lande shall not be alienedin suche a man as such a one, than the condicion shall be taken accordyng to the wordes, and that they may be alienedas for that condicion no more other but to them to whome it is expressely prohibite that the lande should not be alienedto. And if the landes in that case be alienedto one that is not except in the condicion, then he may

alienate

geue the lande to him that is hyste excepted without knowynge of the condition, for condicions be taken strayte in the lawe and wythout equitie. And thus me thynketh that because the collacion is generall and restreyneth no alienacions, that it may not be alienedne by the lawe of the Realme ne yet by conscience, no more for the sayd two causes than it may for any other cause, and this case muste of necessite be iudged after the rules and grounds of the lawe of the Realme & after no other lawe as me semeth.

¶ If the patrone presente not within .vi. monethes who shall present.

The.xxxvi. Chapitre.

¶ In the sayde summe called Summa rosella in the title Benefitium in principio it is also, if the patrone present not within .vi. monethes who shall present and within what time the presentement muste be made. And it is answered there that if the patron present not within .vi. monethes that the chapitre shall have .vi. monethes to presentand if the chapitre present not within .vi. monethes that than the Bysshop shall have other .vi. monethes. And if he be negligent, than the Archepolitane shal have other .vi. monethes, and if he present not than the presentement is devolute to the Patriarke. And if the patropolitane have no superiour under the pope, than the presentemt is devolute to the

Pope. And so as it is sayde there the ordi-
shop shall supplye the negligence of the
if he be not exempte, and if he be exempte
presentement immediatly shall fall to the
shop to the Pope. And as I suppose these
lities holde not in the lawes of the Realme.
M. Whan I graunt thee them not, who shall
sent by the lawes of the Realme if the
pope not present within his .iii. monethes.
Whan for defaute of the patron the Bi
shall presente, onles the kynge be patrone,
if the Bishop present not within .iii. monethes
than the metropolitane shall present whether
the Bishop be exempte or not. And if the
tropolitane presente not within the tyme
ted by the law, than there be diuers opinions
who shall present, for some saye that the
shall presente, as it is sayd before, and some
the kynge shall present. M. what reason
they that say the kynge should present in
sh. This is theyr reason they say that the
is patrone peramoure of all the benefices
in the Realme. And they saye further that
kyng and hys progenitours kynges of
without tyme of mynde haue had auctho
determine ye right of patronages in this
in their owyne courtes, and are bounden
theyr subiectes haue right in that behalfe
in the realme, and that in that case
no appele. And than they saye that if the
in this case should present that than the
should not onely lose hys patronage peramoure
but also that he should not some tyme be able to

doe

...ryght to hys subiectes. D. In what ...were that. M. It is in that case, the ...of the realme is, that if a benefice fal beyng ...the patrone shall present within .vi. monethes ...and if he doe not that than the ordinaries ...present, but yet the law is further in that ...that if the patron present before the ordi...nary put in his clerke: that than the patron of ...shall lose his presentement, and so it is, ...though the time should fall after to the metro...politane or to the Pope, & yf the presentement ...fall to the Pope, than though the aduow...son sende fyll hoyne, so that the patrone might ...yet well get the patrone should not know ...whome he should present, onelesse he shoulde ...to the Pope, and so he should fayle of ryght ...in the Realme. And if perase he wente to ...Pope and presented an abiecte clerke into hym ...yet his clerke were refused and another ...at the collacion of the Pope, yet the pre...sentement of a straunger yet the patrone could ...no remedy for that tyme, within the re...me, for the encumbente might abide stille out ...of the Realme. And therfore the law wyll suffre ...in thys case to fall to the Pope. And ...for that for myne reason it is that the lawe ...of Realme wyll not alowe an excommen...cate that is certyfied into the kynges court ...by the Popes Bulles, yet yf the partie of...fende amende, and yet could not obteyn ...letters of absolucion, the kynge should not ...suffre to tarrye to wayt for the letters of absolu...cion, and so the partie coulde not have right, &

that

that the Ia[illegible] wyll in no wyse suffre. D. The patrone in that vsse may presente to the ordinarie as longe as the churche is voyde, and if the ordinarie accepte hym not, the patrone may vse his remedy agaynst hym within the Realme. But if the Pope wyll put in an encumbent ouer the patrone presente, it is vsuall that he put the presentemente as me semeth before the ordinarie. S. whan the ordinarie hath surrendred his right he hath lost his power as to that presentement specially if the collacio be denolate to the patrone. And also whan the presentement is in the Sodeyne he shal put in the Clerke himself without the ordinarie, and so there is no defaute in the ordinarie though he present not the Clerke of the patrone if his tyme be past, so that there is no remedy agaynst hym for the patrone. D. Though the encumbent abyde styll out of the Realme yet may a Quare impedit lye against hym within the Realme, and if the encumbent make defaute vpon the distresse y appereth to the writ: his title: than the patron shall haue writ to the Bysshope according to the statute so he is not without remedy. S. But in case he cannot be sommoned, attached, nor traynyed, within the Realme. D. He may be sommoned by the churche as the tenaunt in a writte of right of auowson. S. But the auowson is in demaunde, and here the presentement is onely in debate, and so he cannot be sommoned by the Churche here no more than if it were in a writte of annuitie, and there the common returne is (quod clericus est p̄ benefic-

ium

...holde[n] latch seasin vbi potest[as] sumonire) And ...
...whe he might be somoned in the Churche, ...
...might neither be attached nor distrained ...
...e, & so the patrone should be wout remedye, ...
... And if he were without remedye, he should ...
...e in as good case as he should be if the king ...
...d presente, for if the tytle should be gyne to ...
...ynge the patrone had lost his presentac[i]on for ...
...for that time though the churche abide still ...
...e. For I have heard say that in such presente ...
...ons no tyme ake the law of the realme reneth ...
...the kyng. Ep. That is true, but there the ...
...ght should be taken fro hym by right & by ...
...law & here it should be taken fro hym agaynst ...
...law, & there as the law could not help hym ...
...the law will not suffre. D. yet me thinketh ...
...& the title of the tapys i such case is geven ...
...law of the church & not by the temporal law ...
...ause it forfeth but tytle, what the temporal ...
...will in it as me semeth. Ep. In such controu[er]sis ...
...e the Pope hath power to determine the ...
...of temporall thinges, I thinke it is as thou ...
...but i this Realme it is not so. And the ti[t]le ...
...of presentac[i]on is a temporal thig and a temporal ...
...chaunce, & therfore I thinke it belongeth ...
...kynges lawe to determyne, and also to ...
...laweys who shall present after the.bi.mor[te] ...
...as well as before, so that the title of ex[er]c[i]se ...
...d of abilitie or none abilitie be not there ...
...n fro the ordinaries, and in whelwyse it ...
...e beschaunce of benefices, that is to saye, ...
...e Saithe iudged by the kynges lawes ...
...a benefice shalbe saye bodye & lyghte not ...

and

god not by the lawe of the Church as he
lawe hath made a Bysshop or acceptethe anothe
office without licence, or resigneth, or is
ned in these cases the comon lawe sayth that
benefices be voyde, & so they should be, th
a lawe mene made by the Churche to the co
tyne, and so yf the Pope should have any
then cause to present, it should be by the la
Realme. And I have not seene me heard th
lawe of the Realme hath given anye tyte t
Pope to determyne any temporall thinge
any be lawfully detayned by the kinges co
D. It semeth by that reason that thou
made mein that thou preferest the kinges
thoryte in presentementes before the
and that me thinketh should not stande
lawe of god: seth the Pope is the vicar
vnder god. S. That I have sayd prom
that, for the highest preferment in presen
is to have auctoritie to examine the abi
the person that is presented, for if the
be able, it sufficeth to the discharge of the
uerie, by whome so ever he be presented
auctoritie is not denied by the lawe of th
alme to be longe alwaye to the spirituall
diction, but my meaning is that as to th
of presentementes and to determine who
to present & who not and at what tyme,
the churche shalbe iudged to be voyde a
not, belongeth to the kynge and his lawe
els it were a thynge in vayne for them to
pte of abusions & to determine the ty
patronage in his owne courtes & not to
auctho

Except &c. Ryght &c. Ryght &c
nt mr Sr Thomas
al Roy E 18 Eliz

...pointe to determine the right therof, & these ...
...seemeth not to be agaynste the lawe of ...
...nd so me seemeth in thys case the presen- ...
...ent is to giuen the benefice. D. And of the ...
...should haue right to present than might the ...
...happen to continue boyde for euer for ...
...haue sayd before no time renneth to the ...
...in suche presentemetues. D. If any ...
...case happen if the benefice present not than ...
...the ordinary set in a deputie to serue the ...
...he may doe: when negligence is in other ...
...that may present and doe not, & also it ...
...be thought that the benefice whiche hath ...
...ule and gouernaunce owes the people not ...
...of theyr bodyes but also of theyr soules ...
...hys consequence & suffres benefice con- ...
...ly to stand without a curate no more than ...
...be in auoydons that be of his owne pre- ...
...sentemente.

no time ...
must be ...
time in ...
intente

...whether the presentement and collacyon of ...
...all benefices and dignities bodyng ...
...at Rome belonge onely to the Pope.

¶ The xxxviii. Chapter.

...the same summe called Romana refert in ...
...rubi Beneficia primum, in the xxii. title ...
...it is sayd that benefices, dignities, and pen- ...
...ons, bodyng in the court of Rome may not ...
...ken but by the Pope & likewise of the Bo- ...
...rmaunces and of other that come and goe ...
...e court, if they dye in places nye to the ...
...e within two dayes iourney, all theyr ben ...
...to the Pope, but of the Pope present not ...

...lycyn

hoithin a moneth than after the moneth they
whome it belongeth to present may present
themself onely or by their lycar generall if they
be of farre parties, & these suynges hold not
lawes of the Realme. Q. What is the cause
they holde not in this Realme as well as in
other Realmes. A. One cause is this. The
king in this Realme according to the ancient
right of his Crowne, of all his advoidsons that
be of his patronage oweth to present. And in
like wyse other patrons of benefices of their pa-
tronage, & the plee of the right of presentments
of benefices within this realme belongs to the
kynge and his crowne. And these titles cannot
be taken fro the kynge and his subiectes by
their assent, & so the lawe that is made there-
to put away that title liveth not in their
& ouer that before the statute of .xxb. of E.
the iij. there was a great sconuenyence and
chief by reason of byuers promisions & reser-
cions that the Pope made to benefices in this
Realme contrary to the olde right of the
& other patrons in this Realme as well to
bysshopryches, Bysshopryches, Deanries, &
belonging to other dignities and benefices
churche. And many times title therby had
fices within the Realme that vnder false
Englishe tounge, so that they could not
ne comfort the people whan more temporal
that occasion great riches was comming
the Realme, wherfore to auoyde suche
sconuenyence was ordeyned by the same statute
all patrons as well spirituall as temporall

ſhuld haue they preſentementes freely, and in
caſe that collacion or prouiſion were made by
the Bpope in diſturbaunce of ayde ſpirituall pa-
tronithat thē for that time the kyng ſhould haue
the preſentemēt, and if it were in diſturbaunce
of any lay patronithat thē if the patron preſen-
ted not within the halfe yere after ſuch voydaūce
the Bpshope of the place within a moneth
after the halfe yerethat than the kynge ſhould
haue alſo the preſentment, and that the kynge
ſhuld haue the profites of the benefices ſo oc-
caſioned by prouiſion except abbyes & pyoures and
other houſes that haue colage and couent, and
there the colage & couent to haue the profites,
prouiſe the ſtatute in generall & except ſtyll not
the benefices as ſhall hoybe in the rounte of
Wales or in ſuch other place as before appereth
whiche they be taken to be within the proui-
ſion of the ſaid eſtatute as well as the benefices
that hoybe within the Realme, & all prouiſours
executours of the ſayd collacions and prouiſi-
ons & all they attorneys, notaries, & meyntey-
ners ſhalbe out of the protection of the kynge,
and ſhall haue ſuche punyſhement as they ſhould
haue for executyng of benefices beyngyng within
the Realm. D. But I cānot ſe how the ſayde
acte may ſtād with conſcience that ſo farre re-
ſtreyneth the Bpope of his liberte, which as me
thynketh he ought & thus eſe right to haue. M. Be
it as I ſuppoſe the patrons ought of right to
their preſentaces vnder ſuch maner as they
haue theī this realm as I haue ſayd before, &
the. xxxi. chap. of this boke apereth more at
large & alſo for as much as it apereth euidētli y

that great inconuenyence folowed vpon the fay
ynge of the, and that the fayd effautte was made
to auoyde the same, wherby hath growen that
ben fallen by the. Pope and hath ben alwaye
lies in theyr kyndome without resistaunce for
the fayde effautte should therfore stande with
good consyderence.

¶ If a house by chaunce falle vpon a
house that is begonnen why shall
here the lasse.

¶ The .xxxviii. Chapitre.

¶ The fayd summe called Summa rosella, in
the title cullas fortunas, in the begynnynge
of the xvi. parte of a man lende to another a
house wherin he is called there depositum and
house by chaunce falleth vpon the house
ther in that case he shall answere for the
And it is answered there that if the house
ghe to falle that than it can not be taken
chaunce but as the defaute of hym that
house delyuered to hym. But yf the house
strouge and of habytacyon & by comon
ctyon an ordynaunce of falleyng but that it
sodayne tempeste or suche other chaunce
chan it shulde be taken as a chaunce, and
hath the keping of the house shulde be
thoughe hym somtyme agreeth with the
of the Romaynes yet for the more parte
ractyon ouerse and for other wyse calles and
pey that may happen to goodys that a man

the keping, but if he haue for the keping & make promes at the time of the deliuery to redelyuer them safe at his peryll, than he shall be chargyd with all chaunces that may fall. But if he make that promise & haue nothing for keping, I thinke he is bound to no such casualties, but if he wylfull & his own default, for that is a rude & naked promise wherupon as I suppose no action lyeth. Also if a man kepe goodes of another & ther be after hurt or loss by wilful negligence, he shalbe charged to the owner, but if ther be loss by other casualtie as if they be layde in a house that by chaunce is burned, or if he deliuer them to another to kepe that remayne alway with hym, I thinke he be discharged, and these diuersities hold moll commonly vpon pledges, or where a man lyeth goodes of his neighbour to a certain day for certayn money, and many other diuersities be in the lawe of the realm what shall be in the iouparby of the one, and what of the other, which I will not speake of at this tyme. And by this it may appeare that as it is commonly holden in the lawes of England if a common carier go by byweyes that be daungerous for robbyng, or drive by nyght or in other vnconuenient tyme & be robbed, or if he ouercharge a horse whereby he falleth into the water or otherwise, so that the stuffe is hurt or impeyred, that he shall stand charged for his misdemeanour, & if he would percase refuse to carry it, onles promise were made vnto hym that he shall not be charged for no misdemeanour that should be in him that promise were void for it were against reaso & against good manners

and

and so it is in all other causes like. And all these
questions be grounded by secondary conclusions
drawen vpon the law of reason without any es-
tatute made in that behalf. And peraduenture
lawes and the conclusions therin be the more
open and the more open. For if any statute were
made therin, I thinke verily mo doutes and que-
stions would ryse vpon that statute than doth
now whan thei be only argued and iudged after
the common law.

¶ If a priest haue wonne much goodes by
laying of masse, whether he may geue thoſe
goodes or make a will of them.

¶ The xxxix. Chapter.

¶ In the said sume called Summa rosella in the ti-
tle clericus quartus the third article, is alſo
this question if a priest haue won much goodes by
saying of masse whether he may geue thoſe goodes
or make a will of them, wherto it is answered
there that he may geue thē or make a will of the
same. For a man bequeathith money for to haue
masse said for his soule that like law is of such thing
as a parsone winneth by reason of an office.
For it is said there that such thinges come to hi by rea-
son of his own person, which sayenges I think ac-
cord with the lawe of the realm. But for almuch
as in the said article & in diuers other places of
the said Chapitre, and in diuers other Chapiters
of the said sume is put great diuersity betwene
such goodes as a clarke hath by reason of his

churche and such goodes as he hath by reason of his person, and that he muste dispose such goodes as he hath by reason of his churche in such maner as is appointed by the lawe of the churche, & that he may not dispose them so liberally as he may the goodes that come by reason of his owne person, therfore I shall a litle touche what thyngs regarde them, may bide with theyr goodes after the lawe of the realme.

¶ First a Bishop of such goodes as he hath with the Deane and the Chaptre he may neyther make gift nor bequest, but of such goodes as he hath of his owne by reason of his churche, as of the gift of his auncestors or of any other, or of his patrimony he may both make giftes and bequestes lawfully. And an Abbot of the goodes of his churche may make a gift & the gift is good as to the lawe. But what it is in conscience to gyue the cause and intente & quantite of the gyft if it be so muche that is notably hurtyng & hynderyng the couent, or if he gyue away the goodes, or the chalices, or such other thynges as belong to the seruice of god, he offendeth in conscience, and he is but punishable in the lawe, nor yet by the spirituall lawe vnto the tyme he in some wyse be by the lawe of the churche as a waster of the goodes of his monastery. But neuertheles I will not vtterly hold that opinion as to say that they be gyuen by reasonable cause to the seruice of god, notwithstandyng any statute made by the temporall lawe, parteynyng & belongyng vnto the goodes of other, and a Deane and a Chapitre may make a lawfull bequest of goodes that they haue to the seruice of god also of goodes that they haue

Chapitre and brethern the same diuersitie holdeth
as appeareth before of a Bishop and the Deane
and Chapitre, except that in the case of a maister
and brethren the goodes shalbe ordered as shalbe
assigned by the foundacion. And more ouer of a
person of a church, vicar, and chauntry preist, or
such other, all such goodes as they haue, as well
such as they haue by reason of the personage, vi-
caage, or chauntry, as that they haue by reason
of their owne person they may lawfully gene &
bequeth where they will after the common lawe.
And if they dispose part among their parishens,
and part to the byldyng of churches, or gene part
to the ordinary, or to good men, or in such other
maner as is appointed by the lawe of the church
they offende not therin, vnles they thereby hinder
their debtes by duety and by auctority of the
lawe of the church, not regardyng the lawfull
willes, for of them do so it seemeth they refuse the
ordinaunce of god, which hath geuen power to
princes to make lawes. But there as the goodes
fall to their soueraintie in temporal thynges as he hath
in spirituall thinges, there some say that the goodes
of prestes vnto conference be disposed as is
assigned in the said statute, but that holdeth not in
this realme, for the goodes of spirituall men be di-
uersly in what maner soeuer they come to them,
must be ordered after the temporall lawe as the
goodes of the temporall men must be. How be it
if there were a statute made in this realme of the
effect in effect poynted, as the lawe of the church
is, it were a right good end & profitable
statute.

¶ who shall succede a clarke that dyeth intestate.

¶ The xli. Chapter.

...ppon the sayd summe called volella in the Chapitre Clericus quartus the .vii. article is asked this question, who shal succede to a clarke that dyeth intestate. And it is answerd that his goodes gotten by reason of the church, the church shall succede. But in other goodes his kinsmen shall succede after the order of the lawe, and if there be not kinsmen than the church shal succede. And it is there sayd further that goodes gotten by a Canon secular by reason of his churches prebend shall not goto his successour in the prebend, but to the Chapitre. But where one that is benificed is not of the congregacion, but he hath a benifice clearely seperate, as if he be a parson of a parish church or is a prebendary, or an Archedeacon not benificed by the Chapitre, yf the goodes gotten by reason of his benefice, shall go to his successour and not to the Chapitre, and now these sayinges hold place in the lawes of England. ¶ What is than the lawe yf a parson of a church or a vicar in the country die intestate or if a Canon secular be also a parson and his goodes by reason therof and also by a prebend that he hath in a cathedral church and he dye intestate, who shall have his goodes. ¶ By the common lawe the ordinary in all these cases may administer the goodes and after he must commit administracion to the next faithfull friend

Canon secular or

Pson provendal Archedeacon

of hym that is dead intestate that wyll helpe it as he is bounde to do whereby men that haue goodes dye intestate. And if no mā helpe to haue administracion than the ordinary may administer and se the dets payde, and he must beware that he pay the dets after such order as is appoynted in the common lawe. For if he pay dets vpon simple contractes before an obligacion he shalbe cōpelled to pay the debt vpon the obligacion of hys owne goodes if there be not goodes sufficient of hym that dyed intestate, and though it be suffred in such case that the ordinary may pay pounde & pounde like that is to say portacion the goodes amōg the dettours after his discrecion, yet by the rigor of the common lawe he myght be charged to hym that can first haue his iudgement against hym. And furthermore by that is sayd afore in the last Chapiter appeareth if a Bishop that hath goodes of his patrimony, or a maister of a colage, or a deane of goodes that they haue of their aun only to themself dye intestate, that the ordinary shall graunte administracion therof as before appereth and if they make executours than the executours shall haue the ministracion therof. But the bretren and the hinlmen by that reason only that they be executours of hym to hym that is dyrected shall haue nothing with his goodes except it be by custom of some countreys where the heyres shall haue their lomes. Or where the children, the dets and legacies paide, shall haue a reasonable part of the goodes after the custom of the countrey.

offrid ord mary

nobe Lord on hy ma

[illegible] a man is condemned of felony of be
[illegible] for murder or felony, or
[illegible] that is an Alienus may be
[illegible] by euery Traytor.

The xii. Chapter.

It appeareth in the said statute called Ma
[illegible] angelus in the xii. Chapter in the title
of Alienus the ii. paragraf, that he is an Alie
nus that may lawfully men for hunger at the instance
of euery thefte that wyll inquire vpon it, and
such a man may lawfully be slayn, but
the iudge, but by euery private person. And it is
sayd there in the fourth paragraf, that he may
fyght be maged by the lawe as an Alienus
may be slayn by his goodes taken. And it is sayd
further there in the ii. paragraf, that also in re
spect such an Alienus may be slayn of it be pro
ued through a sede of tuelue men and his hed
[illegible] the same [illegible] abiured, or iudged for felony.

Ye. In the lawe of the realme there is no
law that a man may be attainted as an Alien
ne if a man be in full purpose for a certain sum
of money that he hath receiued to slay a man
it is no felony the murther in the lawe to be pu
nished the act for cause I se they not murther to be
punishable by the common lawe of the realme
though it be deadly sinne afore god. But in certain
of the same other particulars taken by statute the
tent may be punished. And though a man in
case bil a man for money yet he shal not be attain
ted that he is an Alienus. For as it is sayd be
fore

[illegible] no such wronge of [illegible] in the
[illegible] of the realme but he shall in such case be at-
[illegible] upon the murther. And if he confesse it or
[illegible] that he is not guilty and is found guilty by
[illegible] that have enquirement of it, [illegible]
[illegible] shall forfeyte his landes and goodes. And
[illegible] if an officer by reason of the murther
[illegible] doubted and will not answere to the
[illegible] he shall attayne of the murther, and
[illegible] his landes, and goodes, but if he re-
[illegible] of the murther upon an inditement of the
[illegible] and thereupon standeth dombe & will
[illegible] answer, there he shall not be attayned of the
[illegible] but he shall have payne strayt and dure, &
[illegible] he shall be pressed to deathe and he shall
[illegible] his goodes, and not his landes. And
[illegible] of this case (that is to say) though a man
[illegible] for murther of felony, as he abideth
[illegible] he be otherwyse attainted: yet it is not
[illegible] for any man to murther hym or slay hym,
[illegible] put hym in execucion but by auctority of
[illegible] lawes. In so much that if a man be ad-
[illegible] to have payn fort and dure, and the offy-
[illegible] hym, or on the other parte it pitieth
[illegible] payn fort and dure, he there he shulde be-
[illegible] hym, he offendeth the lawe.

[illegible] if an officer hath auctoritie to put
[illegible] to deathe (may not put hym to deathe but ac-
[illegible] to the iudgement) shall me thinke it should
[illegible] a marueyle that [illegible]

[illegible] the iudgement be that he should [illegible]

in chaynes, and the officer hangeth hym in
thynges and not in chaynes. I suppose he is
guilty of his death, but some say he shal there
a fine to the kyng because he hath not fol
the wordes of the iudgement.

nota

Also if a man that is no officer would arr
man that is outlawed, abiured, or attay
murther or felony as is aforesayd, and he
eth the arest, and by reason of that disobey
is slayne I suppose the other shal not be
for his death, for it is lawful vnto every
take such persons and to bynde them fou
that may be ordered according to the law.
a capiatur directed vnto the sherife to take a
in an accion of det or trespace: there no man
take that man but he haue auctorite fro
sherife. And if any man attempt of his
to take hym and he resisteth and in
fyghtyng is slayne he that would haue taken
guilty of his death.

¶ Addicion.

¶ Whether a man shalbe bounden by the
ance or offence of his seruaunt or officer.

¶ The xliii. Chapter.

The xliii. chapter entled, Summa
in the title dominus, iura paragraf. In
this question, whether a man shalbe charg
his household. And it is sayde there that

...the houshoide offendeth in an office of ma-
...that the maister is the chefe officer of, and
...the woorke and the profit of the houshold.
...it shalbe his defaut that he would chuse such
...es, for he ought to appoynt honest per-
..., but it is sayd there, that is to be understand
...ly and not criminally, wherby as is sayde
..., he that is a gouernour is bound for the of-
...s of his officers, and that the same is to be hol-
...d of a Capitaine, that he shalbe bounde for the
...nce of his squiers. And an host for his geli
...and such other. Seuen heles it is sayd there that
...ain doctours there rehearsed, and there o that
...e office is an open or a publike office, as an of
...e of power or other like. It sufficeth to bryng
...th hym that offended. But it is other wyse.
...e be not a publike office, but an host or a ta-
...ner or other like. But if the houshold offended
...t in the office, the lord is not bounde as to the
...t but in conscyence, he is bounde if he wer in
...ault by not correcting them, for he is bounde
...correct them both by woorde and example, and
...he spende any incorrygible he is bounde to put
...m away except that he hath presumptions that
...he do so, he wil be the woorse, and than he may
...d that he thereth best, and he is excused e ls
...not. For to such persons it is sayd. Error qui nō
...corrigitur approbatur: that is to say, an error that
...is not reformed is approued. And though diuers
...of the sayers before rehersed agre with the law
...of reason, yet al do not so, s also those so, are to
...be obserued by antiquitie of the law of the realm e
...not by the antiquity alledged in the last paragraf
...

And

And therfore I entend to treate somwhat [illegible]
the maister shalbe charged by his seruaunt [illegible]
pusie, or by them that be vnder hym in any [illegible]
and where not, and than I entend to touch [illegible]
other thynges where the maister after the [illegible]
of the realme shalbe charged by the act of his [illegible]
naunt in other cases not concernyng offices, [illegible]
where not.

Fyrst if a mayde committed to warde by [illegible]
atturneyes of accompt, and the keper of the [illegible]
son sodenly hym to go at large: than an accion [illegible]
bet shall lye agaynst hym. And if he be not [illegible]
cient, than it lyeth agaynst hym that commit
the parson vnto hym, and that is by reason of
statute of westm. the. ii. the. xi. Chapter.

Also if Bayliffes of fraunchyses that have
turne of writs make a false returne, the par
shall have auerment agaynst it as well of to
offices as of other thinges as wel as he shal
agaynst the Shirife, but all the punishment
is only vpō the Bailife and not vpon the L
the fraunchyse, and that doth appeare by the
tute made in the fyrst yere of kyng Edward
iii. the. b. Chapter. But if an vnder Shirife
a returne wherupon the Shirife shalbe amer
there the high Shirife shalbe amerced for
returne is made generally, i his name. But if
a false returne wherupon an accion of det
lieth, in that case it may be brought agaynst
vnder Shirife, and see therof the statute that
called Quia autem de male returnatis [illegible]

Also if the hyenous sutter make [illegible]
shall anyswer for hym vnto [illegible]
as for hym selfe.

If

appeareth in the statute made in the xxb. yere
[illegible] Of maistie the kyng. De prouisionibus
[illegible] Chapter.

Also in the statute that is called Statutum
[illegible], it is enacted among other thinges that
[illegible] of the exchequer shal put non clarke bu-
[illegible] but such as he wyll answer for. And
[illegible] much as the statute is generall: it seweth
[illegible] answerer as well for an vntrouth in any
[illegible] clarke as for an ouersyght.

Also in the .xviii. yere of kyng Edwarde the .iii.
[illegible] Chapter, it is enacted that al Gailes shalbe
[illegible] ouer vnto the kynges, and that the shi-
[illegible] shall haue the keeping of them, and that the
[illegible] shall make such maner garneyng for the
[illegible] shal wyll answere. And nevertheles it
[illegible] that if ther be an escape by default of the
[illegible] that the kyng may charge the Gailer if he
[illegible] that it is no doubt but he may charge the
[illegible] by reason of this statute yf he wyll. But
[illegible] a wylful escape in the Gayler which is fe-
[illegible] in law, the felon shal not be leuied to an-
[illegible] to that felony ne none other but the Gailer
[illegible] and they that assented to hym.

Also yf a man haue a hyghe wyke, constable
[illegible] Bailywyke in fee, wherby he hath the le-
[illegible] of wylleneres, if he let any to replegiare that is
[illegible] replegiable and thereof he attache, he shall
[illegible] the office. And if [illegible] an vnderstraper. Ex-
[illegible] as aforesayd hath the le[illegible] of the pri-
[illegible] with it: as thou[illegible] of the land
[illegible] [illegible] .iii. yeares [illegible]
[illegible] [illegible] [illegible]

ruly

veth in the statute of westm. the first the .xii. chap-
ter. And so it appeareth that in this case he that is
the Lord of the prison is not bounde to answere
for the offence of them that have the rule of the
prison vnder hym, but that they shall have the
punishment themselfe for theyr misdemeanour.

Also there is a statute made in the .xxvii. yeare
of kyng Edward the .iii. the .xix. chapter, which is cal-
led the statute of the Staple, wherby it is ordeyned
that no marchant ne none other man shall not take
theyr goodes for the trespas or forfayt of theyr
seruauntes, onelle it be by commaundement of their
master, or that he offend in the office that his mas-
ter hath put hym in, or elis that the master will
be bound to an answer for the debts of his seruaunt
by the law marchaunt, as in some place it is ex-
pressed.

Also it is enacted in the .xiiii. yeare of kyng
Edward the .iii. the .viii. Chaputre that wapentakes
takes and hundredes that be severed from the
countie shalle adioyned ageyn vnto them, and
that if the Sheriffe holde them in his owne hand
that he shall put in them such Bailiffes that have
landes sufficient, and for that wherby he may an-
swer: and that if he let them to ferme, that they
be let to the auncient ferme, but after it is pro-
hibited by the statute of the .xxiii. yeare of kyng Ed-
ry the .vi. the .v. Chaputre. That no Sheriffe shall
set his Bailiwyches nor wapentakes to ferme.
And so when they be once in the Sheriffes
handes by the Sheriffes putting in Bailiffes, they
be but as vnder Baylifes to the kyng and the
Sheriffe hath Baylife by theyr in maner the same

seruaunt

...es & put in only by him. And therfore by
...said statute of kig Edward the.iiii. the shal an
...wer for thē if thei offend in their office, but if the
...y be put thē to ferme: than though thei the
...offend the statute in that doyng, yet whether
...they be charged for their misdemeanour in the
...same or not, as a great dout to some men, for they
...say this statute is only to be understād wher
...as officiers be the Sheriffes hāders but here
...they be not so, ne the Bailifes be not his seruātes
...nor his fermours. And therfore thei say that yf he
...or his bailife be charged for them. It is by the sta-
...tute & not by the statute aforsaid. ¶ Also
...where of kīng Henry the.vi. the.xiiii. Chapitre
...it is enacted that officers by patēt in every court
...of the kīng that by vertue of their office have po-
...wer to make clarkes in the said courtes shalbee
...sworne & sworne to make such clarkes vnder the
...payn & they wyl answer. ¶ Also the Coroners
...& clarkes of the pleis be prohibited thei shall hold no plee
...of debt vpon wageth to the kīges courtes vpon payne to
...make gode damages to the party greued & to make raisō
...to the kīg & that the supersours shal answer for
...their officers as for their own dede. westh. the
...first. xiii. Chapitre.

...the sergeaunt of the Catery shal satisfy al
...manner damages, and executions that shal be
...awarded against him that is pursuyour or acha-
...sour vnder him & that offend against the statute of
...kīng Edward the.iii. or against this statute
...made of kīng Henry the.vi. In case the pursuiour
...or chasour be not sufficient. &c. And the party
...against whom shall haue a Scire facias against the said
...sergeaunt

Statutum de Marchia Walliæ.

Modo secundo Regni Regis Edwardi.

seruaunt, and so forth make an ende of this
[illegible]
[illegible] for trespas of battery or of wrongfull
[illegible] tanden or tenementes nye yet for fe-
lony or murther the mayster shal not be charged
[illegible] seruaunt, wherein he dyd it by hys com-
[illegible]
[illegible] also if a seruaunt borowe money in his ma-
[illegible] name the maister shal not be charged with
[illegible] unles it come to hys use, and that he hys a-
gent, and the same lawe is if the seruaunte make
a contracte in hys maysters name, the contracte
shall not binde hys mayster unles it were by his
maysters commaundement or that it came to the
maysters use by hys assent. But if a man sende
his seruaunte to a fayre or market to bye for him
any thynges although he commaunde him
to bye them of no man in certayne, and the
seruaunte doth accordyng, the mayster shall be charged
but of the seruaunte in that case hys sherte
in hys alone nowe not speakynge of hys mayster
the mayster shall not be charged unles the
thynges bought come to hys use.

[illegible] also if a man sende hys seruaunte to the mar-
[illegible] with a thynge to bringe he knoweth to be de-
[illegible] to be solde to a certayne man and he sel-
[illegible] performeth not hys accion lieth against the
[illegible] but if the mayster knoweth hym not selle
[illegible] to a certayne but generalye to
[illegible] he selleth it accordyngly there
[illegible] an accion of deceyt against the mayster.
[illegible] also if seruauntes kepe the maysters fyre
[illegible] hys maysters goodes in fyre

ainst his neyghbours also, there an accion lieth a-
gainst the maister. But if the seruaunt haue fire
negligently in the strete and therby the house of
a nother is brened, there lieth no accion against
the maister.

Also if a man bespye to lodge with one that
is no common hostiler and one that is seruaunt
to him that he loggeth with robbeth his cham-
ber, the maister shall not be charged for that
robbinge, but if he haue ben a common hostiler
he should haue ben charged.

Also if a man be gardeyn of a prison wherin
is a man that is condempned in a certayne some
of money, and another that is in prison for fel-
ony and a seruaunt of the gardeyn that kepeth the
vnde of the prison lauer him wittingly letteth
them both escape in this case the gardeyn shall
answere for the debte and shall paye a some by
the escape of the other as for a negligence of
his and the seruaunt onely shall be put to an-
swere to the felony for the wylfull escape.

Also if a man make another his generall re-
ceyuoure, and that receyuour receyueth money
of a creditour of his maister and maketh him
acquytance and after payeth not his maister yet
that payment bychargeth the creditour but if
the creditour han taken an acquytaunce of his
seruaunt without paying him any money then
that onely were no bar to the maister onles he
han receyuour by writtinge and generall suche
thynge to make acquytaunces, and then that
thynge must be the wed. And if the creditour
suche tale by agreement betwene the seruaunt

and lyuende lyuer to the receyuour a horse or a
[illegible] in recompence of the seruice he
[illegible] charged not the creditour vnles it
be declared ouer how the matter and he agree
to it. For the receyuour hath no further power to
make no such communication but his mayster gaue
him speciall commaundement therto.

Also if a seruaunt be a creditour vnto his
maister that his maister lende him to his profyte
and he payeth it but a litell and litell payment vntyll
such time as the maister hath not lend him
it in deede except that it come after vnto the
[illegible] the maister hath [illegible]

Also a mesnalte a seignyte of a manor and
the lord of whom the manor is holde graun-
teth by fyne or feffement to another and he dyeth a-
fore the rent due the graunte of the reuer-
sion of the rent commeth to the mesnalte and
if the rent be true, he shall not vnder that mayster
[illegible] but he returne hymselfe, but if the lorde of whom
the lande is holden vpleaded of the seignyorye if
the baylyfe payeth the rent to the heyre of the
tenaunt in a good season to the heyre though
the baylyfe had no commaundement of his mayster
to pay it. For it belongeth to his office to pay rē-
tes seruice but not his charge as some men say.

Also an encrochement by the baylyfe that not
[illegible] the mayster to answere if he had no cōmaū
[illegible] of the mayster to pay it. Also if the
[illegible] the tenaunt dyeth
[illegible] the tenaunt dyeth
[illegible] the tenaunt dyeth notice to the baylyfe

in anothe
to answe
it.

The xxiiii. Chapter.

The xxv. Chapter.

lordes them that lyst to treate further therin hereafter.

Also if a villayne have goodes either by his owne proper byenge and fellynge, or otherwise by the gyfte of other men, be hath as perfect a property and also as whole interest in them, as he hath in his landes, & the lorde as any free man hath may. But if the lorde seaze the goodes and catalles they be the lordes, & the interest of the villayne therin is determined.

Also if the lorde seaze parte of the goodes of his villayne in the name of all the goodes that the villayne hath or shall hereafter have, that seasure is good, for all the goodes that he had at that time, though they were not then present at the time of the seasure. But if goodes come to the villayne after the seasure be made lawfully, give them clerely not intrapped in the same seasure.

Also if the lorde claime all the goodes of his villayne and seaseth no part of the that seasure is good, and the gifte of the villayne is good notwithstanding that seasure.

Also if a man be bounde to a villayne in an obligacion in a certayne summe of money, and the lorde seaseth the villayne or else the obligacion is his, but yet he can take no action theron but in the name of the villayne, and then lose if the villayne release the bettre the lorde is barred by that release.

Also if a woman be a nyet, and the villayne a free man, the goodes & catalles by the marriage be the lordes, and the lord that comyth to have

claime sans parte

19

make estate sealure and if the husbande in that sale maketh him sure him executor and dieth, if the wife taketh the same goods against as pertayneth to her husbande, yet it shal not be lawfull for the lorde to take them from her thoughe she be a nurse as she was before the mariage.

Also if goodes be giuen to a man to the vse of a villayne, and the lorde seaseth those goodes, that seasure after sum me is good by the statute made in the xxi. yere of kinge Henrye the. viii. whereby it is enacted that the lorde shall entre into landes wherof other persons be seased to the vse of his villayne and they say that the same statute shalbe vnderstande by equitie of goodes in vse, as well as of landes in vse.

Also if a villayn be made a preste, yet neuertheles the lorde may seaze his goodes & landes as he might before. And vntil the seasure he may alien them and giue them away as he might before he was preste. And in this case the lorde may order him so that he shall doe him such seruice as belongeth to a prestto doe before anye other but he may not put him to no labourne nor other bulines but that is honest and lawfull for a prest to doe.

Also if a villayne entre into religion in hys yere of proffe he may dispose his goodes as he might haue done before he toke the habitte hym. And in likewyse the lorde maye seaze hys goodes as he might haue done before but if he after make executours & be professed. And ye executours take the goodes to the performaunce of

¶ The iiii. Chapitre.

...tion of the goods of the church, and it is ...
...ecra there that it shall not be alienated nor ...
...that the goodes & patrimonall benefice of ...
...geven for a tytle and expressely assigned vnto ...
...in that it shall be as into a patrimony of the ...
...church except he haue after another benefice ...
...of the same kynd. But if it be severely assigned ...
...to his title, some agree it may be alienated, & ...
...also rule by the iudges of the realme it may ...
...lawfully be alienated whether it be severely or ...
...simply assigned to his title, for the ordinarie ne ...
...the party himself after the olde customary of ...
...the realme haue no auctoritie to binde any in ...
...conscience by auctoritie of the spirituall lawe, ...
...to charge the land after it is assigned and ...
...agreed to be his tytle flatterly in the same selfe ...
...wise to be bought, solde, charged, or put in execu- ...
...tion as it did before. And therfore it is found that ...
...the murtheres of ordinaries well assure such ...
...for a tytle to the intent that he that is pro- ...
...moted should not fall to extreme poverty or go ...
...a begging, without any liuinge vnlesse the ...
...same will serue them, for of meere right ...
...appertenance lastinge this realme ought to ...
...be governed by the temporall lawes, & inheritaunce ...
...be determined in them rejecting that by the ...
...other names of records, as by feoffaments, ...
...wills & other as it lefte by a bargayne that shall ...
...not be. Also ouer that to assigne a lande for ...
...a fee as his right hath a fee simple be- ...
...cause the lawes of Englande be the ...
...lawes that be vsed & vnderstanded by the ...
...inhabitaunce of the people, and in this case to said ...

such

Dowarfis
Apurtenaillahis
Pertinaudre

note

fuche maner of conclusion, and therfore all the
in deme in fuche cafe i allegaty of the fayd title
hoyde. Alfo there is no entereft that a man
in any manr landes or tenementes for term
of lyfe, for terme of peres or otherwife but
he by the law of the Realme may put a may
right thertu of the wyf. And than when this
alienath by fayne generally it were agai
the law of the Realme that any intereft of
a tytle fhould remayne in hym againft his
fale, and there is no diuerfite whether the
nement of the title were open or fecrete,
fo the title is hoyde to all intentes. And in
ple if a houfe of religion or any other fpir
man that hath graffed a tytle after the
fem in fuche titles fell all the landes
that they have that fale in the lawes of
landes as good as againft that tytle, and the
fhall neuer be put to anfwere to that title
fome fay that vpon the common titles
made haply in fuche cafe that if he fil to
tie that hath the tytle he is without remed
they be fo made that at the common law th
no remedy for them, and if he take a fute
fpirituall court many men fay that a pri
of a premunire facias. And therfore it is
for ordinaries in fuch cafe to confule
that he aferued in the law of the Realme
fuche a forme deuifed for making of fuch
that if nede be wolde ferue them that
made vnto hym els let them be prouided
put any tytle, & to truſte in god that if they
hym as they ought to do he will prouide

...e of any concerne in them, but will leue it ...ther that will of charitie take some further ...e verities in that behalfe.

Diuers questions taken out by the Au-
...or of the summes called Summa rosella, ...and Summa Angelica, whiche he thin-
...keth necessary to be loked vpon ...and to be leue howe they ...stande and agree with ...the lawe of the ...Realme.

The.xvii. Chapitre.

The fyrste Question is this, whether a ...mynour maye breake a lawe, perteyne ...Summa rosella, tercia conclusio. ...

The seconde is if a man arrested ...then he rescued by the power, whether ...that rescuinge stretche to the paine ...ella in the title Dampnum in ...it a man be maymed or beaten, whether ...ence, or murther or beinge in the ...ming may be saued by extraunuers, whether ...ter, Summa Angelica, in the title ...

...aunswered before in the xii.

...whether he myght [illegible]

ma angelica in the title donatiuus. Para. viii.

This question is answered to in a new addi-
tion, as appereth before in the .xlii. chapt.

Item whether a villayne may giue away
goodes. Summa angelica, in the title dona-
tiuus. Para. ix.

This question is answered to in a new ad-
dition as appereth before in the .xlvii. chapter.

Item whether an Abbot may giue. &c. Sum-
angelica, in the title Donatio. i. Paragrafe
C. xxxix.

Item whether a woman couert maye giue
away any good, and it is answered. Summa an-
gelica. in the title donatio. i Paragrafe. vi.
she may not without the hade goodes belon-
dalwyp but only in almes.

Item if a man doe treason whether his
of goodes after before attayndre be good
ma angelica. In the title donatio. i. Para
it semeth there nay, and lode Summa an-
in title alienacio. Para. xviii.

Item if a man unrydgiue make a co-
bee wene him minestrelse is prper that
mandrio may together, whether he part
bee goodes. Summa angelica in the title
Paragrafe. xviii.

Item whether the father maye giue
lonie, Summa angelica, in the title don
Para. xix. and Summa roselta in the title
vii. Paragrafe. xlii.

Item whether a man may giue above
ablone infinuacione. Summa angelica, in the
Donatio minus. Paragrafe. xv.

Item whether a gyrle halbe endowed
trge

...titude, Summa rosella in the title dona...
...paragrafe. xvii. q. xxix. and there it is sayd
...the gyfte is doyne by the lawe of nature,
...lone Summa angelica, in the title donacio
...para. xlii. q. xlv.

Item whether any gyft betwene the husbande
...the wyfe may be good, and it is sayd yͤ husbande giuerth it cauſe remuneracionis
...Summa roſella, in the title donacio. para.
...xxvii.

Item if a man make a wyll and entre into
...religion whether he may after entrynge the wyll
...breke that. Freres minours say not, and ſo
...many, Summa roſella, in the title donacio
...paragrafe. xxvi. in fine.

Item if a man gyue another a towne wyth all
...rightes that he hath in the ſame wyth the
...patronage &c. and the tithes paſſe, Summa
...roſella, in the title donacio. i. paragrafe. xlvi.

Item whether all that is bought wythin the mo
...of the Churche be the Churches, Summa
...roſella, in the title eccleſia. i. para. vii.

Item if a gifte made to a monaſtery may be
...reuoked by that the giuer hath children after
...the gyfte. Summa angelica in the title donacio
...paragrafe. viii.

Item if a man bye a typpet bothe the hande
...wherwyth he be bounde by the ſame cotte.
...Summa roſella, in the title empcio and
...uencio. para. vi.

Item whether a common theefe deſcendinge
...popularo agrorum maye abiure, Summa ro-
...ſella in the title ſanctuarium. i. principio fo. ha-

...betur

ing, whether the statute is good and it is left for a question. Summa rosella in the title excommunicacio. i. diuisione. xviij. Para. viij. in fine.

Item if a man make a lease of a mylle for terme of yeres & it is agreed that the lesse shal grinde the lessour tolle free during the terme after the lessour is made an Erle or a Duke & hath greater household than before, whether the lesse be bound therto. &c. Summa rosella in the title familia. Para. v.

Item if a master will not pay his seruauntes wages that hath serued him faythfully whether the seruaunt may take secretly as much goodes of the masters. &c. if he do whether he is bounde to restitucion. Summa rosella in the title familia. para. vi.

Item thynges immouable of the church may not be geuen. Summa rosella in the title of feodum. Paragraf. i. & is there in principio what feodum is.

Item whether the sonnes, bastardes and the sonnes lawfully begotten shall inherite together Summa rosella in the tytle filius. Para. i.

Item whether father and mother may succede to their bastardes, Summa rosella in the title filius. paragraf. viij.

Item whether the father may leaue any of hys goodes to his bastard, Summa rosella in the tytle filius. Paragraf. v. and Summa rosella in the title societas. Para. xviij.

Item whether the offence of the father shall hurt the sonne in temporal thynges, Summa rosella in the title filius. Para. x.

Item if a manne geue all his landes and goodes to his children, whether a bastarde shal

haue any part, Summa rosella in the title Iudg Paragraf. xvii.

Item to whom treasour founde belongeth, Summa rosella in the title furtum. Paragraf. vi

Item yf a Dere of other wyld beast that is by force hurt thes he may be taken commenly into another mannes grounde, whether is he his that owneth the grounde, or his that strake hym, Summa rosella in the title furtum. Para. xiii.

Item whether theft be in a litle thyng as wel as in a great thyng, Summa rosella in the title furtum. Para. viii.

Item what payne a thefe shall haue, Summa rosella in the title furtum. Para. xvii.

Item the goodes of dead men go to the heires and that of damned men. s. De terris, Summa rosella in the title hereditas. Paragraf. i.

Item whether a man shall be iudge guilty of murther by commaundement counsayle or ellis, Summa rosella in the title homicidium. ii. per totum, and lyke matter in homicidium. iii. in principio and diuers other cases.

Item a man maketh a privy contract with a woman and after hath a chylde by her and after marred another woman and hath a chylde, he not knowyng of the first contract whych of the chyldren shalbe his heyre, Summa rosella in the title Illegitimus. Para. iii.

Item whether the Pope may legitimate one to temporall thynges and to succede, Summa rosella in the title Illegitimus. Para. xvi.

Item if goodes be found that wer lost of the owner as forsaken who hath ryght to the, Summa

marcella in the title Inuēta. Para. ii. And Iohe Faunma marcella in the title furtum. Pa. xvii. And thus I make an ende of theis questions, and because thou desiredst me in the xxxi. Chapter to shewe thee somwhat where ignoraunce excuseth in the lawe of the realme & where not, I wyll answer vnto that to the questiō & so cōmit the to god

¶ Where ignoraunce of the lawe excuseth in the lawes of Englande and where not.

¶ The xlvi. Chapter.

IGnoraunce of the lawe though it be inuincible doth not excuse as to the lawe but in fewe cases, for euery mā is bound at his peril to take knowlage what the lawe of the realme is as well the lawe made by statute as the cōmō lawe, but ignorance of the dede which may be called the ignorance of the truth of the dede may excuse in many cases. D. I put case that a statute penal be made & it is enacted that the statute shalbe proclaymed before such a day in euery shyre, & it is not proclaymed before the day, & after the day a man offendeth against the statute shal he ren in the penalty. ❧ I thinke ye, if there be no farther wordes in the statute to help hi, that is to say, that if the proclamacio be not made that no man shalbe bound by the statute, & the cause is thus, ther is no statute made in this realme but by the assent of the lordes spirituall & temporal & of all the cōmōs, that is to say, by the knightes of the shire citezins & burgeises & by their assent of the commons, which in the parliament representeth the estate of the hole commons.

And euery statute there made is of as stroge effect in the law, as yf all the comunons wer there present personally at the makyng therof, and like as there neded no proclamatiō yf all wer there present in their own person, so the law presumeth, there needeth no proclamation whan it is made by theyr auctority, and than whan it is enacted that it shalbe proclamed. &c. that is but of the fauour of the makers of the statute and not of necessitye, and it cannot therfore be taken that their intent was that it should be doone yf it wer not proclaymed. Neuertheles some be of opinion that yf a man before the day appoynted for the proclamation offend the stat, that he should not in y case be punished, for they say that the intent of the makers of the statute shalbe taken to be that none should be punished before that daye, which is a hard to some other, but admitte it be as they say that he shalbe excused, yet he is not excused by ignoraunce of the law, but because the intent of the makers excused hym. D. It is enacted in the. xii. yeare of kyng Richard the seconde the xi. Chapter y euery Sherife shall proclayme the statute of wynchester that tymes euery yere in euery market towne to the intent that offenders shal not be excused by ignoraunce, and it semeth by thes wordes that yf no proclamation be made that the offender may be excused by ignoraunce. M. Some take the intent of that statute to be that the people by that proclamatiō should haue knowledge of that statute of wynchester to the intent that the forfayture therein may be taken as well in conciens as in law, and some take

the

the statute to be of such effect as thou speakest of that is to say, that no forfeyture shoulde growe vpon the statute of wynchester against them that wer pgnoraunt but proclamacion wer made according to ꝑ laid statute of Kycharde. And yf it be so taken the statute of wynchester is of small effect agaynst most part of the people, for certayn it is that the sayd proclamacion is not made, but admit it be as they say, than they that be pgnoraunt be excused by the sayde particuler estatute specyally made in that case & not by the generall rules of the law, and sometyme in dyuers statutes penalties they that be pgnoraunt be excused by the self statute as it is vpon the statute of Kycharde the ii. the .xvii. yeare, the seconde statute and the xii Chapter where it is enacted that if any person take a benefice by prouision that he shall be banished the realme and forfeit all his goodes, and that if he be in the realme, he anoyde within .ii. weekes after he hath accepted it, and that none shal receyue hym that is so banished after the said .ii. weekes vpon ipse forfeyture, yf he haue knowledge, and so he that hath no knowledge is excused by the expresse wordes of the statute. And in likewyse he that offendeth agaynst Magna carta is not excommenged but he haue knowlage that it is prohibit that he doth. For they be only excommenged by the sentence called (Sententia lata super cartas) that doth it wilfully or that doth it by pgnoraunce, and correct not themself within .xl. dayes after they haue warning. And sometyme they that be ignoraunt of a statute be excused fro the penalty of the statute bycause it shalbe

Statute de prohibicion ou ne mi mes

taken that the intēt of the makers of the statute was that none shalde bound but they that haue knowlage, but that any man should be discharged in the lawe by ignorance of the lawe only for that he is ignorāt. I know few caules except it might be applyed to infantes that is in their infancy and within yeres of discrecion, for if ignorance of the lawe should excuse in the lawe, many offenders would pretend ignorance. D. What an infant that hath discrecion and knoweth good fro euill be punished by a penall statute that he is ignorant in? M. If the statute be that for the offence he should haue corporall pain I thynke he shalde excused and haue no corporall payn, but I suppose that this not for the ignorāce for though he knew the statute and wittingly offended, yet I thinke he shall haue no corporal paint as where he pleaded coptenaunce by dede that is found against hym, or yf he pleade a recoide in assise and tayle of it at his day, but that is because the lawe presumeth that it was not the intente of the makers of the statute that he should haue that punishment but if he be of yeares of discrecion to know good fro euill whether he shal than forfeit the penalties of a penal statute it is more doubt, for it is commonly holde that if an infāt had not been excepted in the statute of forjudgement that the forjudgement should haue bound hym, and so that his entre & his leuenge of a recoile against the statute or yf he be a gardein of paule & lacker a pylloner escape he shal pay the det because the statutes be generall & if he should by the statutes be bound with age & the reaso wil that he may by a statute penal be

Enfant

Anni Ratio his sunt duo dcti.

his goodes. D. If an infant doe a murther or a felony at such yeares as he hath discretyon to know the law, shall he not haue the punishment of the law as one of full age. S. I thinke yea, but that is by an olde maxyme of the law for eschewyng of murthers and felonyes, for it is of a trespas, but these cases rēne not vpon the ground of ignorāunce, but with what yet infamies shalbe punishable or not punishable, for the tenderues of theyr age, though they be not ygnorant. D. Be not yet knyghtes and noble men that are bounde most properly to set their study to actes of chyualry for defence of the realme. And husband men that must vse tillage & husbandry for the sustenaunce of the commonalty, and that may not by reason of theyr labor and themselues to know the law, discharged by ignorāunce of the law. S. No verely, for sith al wer makers of the statute, the lawe presumeth that al haue knowlage of that that they make as it is said before, and as they be bound at their perill to take knowlage of the statute that they make: so be all them that come after them. And as the knightes and other nobles of the realme meaneth that thei should be bound to take knowlage of the law as wel as any other within ꝑ realme except the that geue thēself to the study & exercise of the law, & except spiritual iudges that i many cases be bound to take knowlage of the law of the realm as is said before i the xxb. chapter. For though thei be bound to actes of chyualry for defence of the realme, yet they be bounden also to the actes of iustice, and that also semeth more than

note Gentlehommes & prosant

other w by reason of theyr great possessions & auc-
thority. And for the well ordryng of the tenātes
seruauntes and neyghbours, that many tymes
haue nede of theyr help, and also because they be
oft called to be of the kynges counsayle, & to the
generall counsayles of the realme, where there
counsayle is ryght expedyent and necessarye for
the common welth, and therfore yf the noble men
of thys realme would let theyr children bringe
vp in such maner that they should haue learnyng
& knowlage more thā thei haue cōmonly vsed to
haue in time past, specially of the groūdes & prin-
ples of the law of the realm wherī thei be inherits
though thei had not the high cūnig of the hole bo-
dy of the law, but aft such maner as master fortes-
cue in his boke ꝓ he writeth the boke (de laudib⁹ le-
gum Anglie) exhortyth the prince to haue know-
lage of ꝓ lawes of his realm, I suppose it would
be a great help hereafter to the ministracīō of Iu-
stice in this realm. A great suerty for themself &
a right great gladnes to all the people for certain
it is the more part of ꝓ people would more glad-
ly here that their rulers and gouernours endeu-
red to order thē with wisdō & iustice thā with power
& great retinues. But ygnorance of the dede many
tymes excuseth in the lawes of England. And I
shall shortly touche some cases thereof to the in-
tent where it shal excuse & where it shall not excuse, &
than the reader may adde to it after his pleasure
and as he shall thynke to be conuenyent.

master fortes-
cue his
boke de La
udibus Leg
um Angl.

¶ Certayn cases and groūdes where igno-
raunce of the dede excuseth in the lawes
of England and where not.

¶ The

¶ The. xlvii. Chapter.

If a man bye a horse in open market of hym that
hath no right hath no property in hit not knowyng
but that he hath right he hath good title & right
to the horse, and ygnoraunce shall excuse hym
that he had bought hym out of the open mar-
ket, & yf he had knowen that the seller hadde no
right, the byeng in open market had not excused
hym. Also yf a man retayn another mans seruãt
not knowyng that he is retayned with hym, that
ygnoraunce excuse hym both for the offence that
was at the cõmon law agaynst the maxime that
prohibyted such retaynyng of another mans ser-
uaunt. And also agaynst the statute of xxiii. of Ed
ward the third, wherby it is prohibite vpõ paine
of imprysonment that none shall retaynie no ser-
uant that departeth within his terme without
leue or reasonable cause, for it hath been alway
taken that the intent of the makers of the sayde
statute was that they that wer ygnoraunt of the
first retaynour should not ren in any penalty of
the statute. And the same law is of hym that re-
tayneth one that is ward to another, not know-
yng that he is ward. And yf homage be due of
the tenant after that the homage is due maketh a
feoffement, & after the lord not knowyng of the
feoffement distreineth for the homage in that case
that ignoraunce that excuse him of damages in a
Replevin though he cãnot auow for the homage
but if he had knowen of the feoffement he should
haue yelded damages for the wrongfull takyng.
Also if a man be bound in an obligacion that he

shall repayre the houses of hym that he is bounde to by such a certayn tyme as oft as nede shall require, and after the houses haue nede to be repayred but he that is bounde knoweth it not, the ignorance shal not excuse him for he hath bounde hymself to it, and so he must take knowlege at his peryl, but yf the condicio had been that he should repaire such houses as he to whom he was bounde should assigne, and after he assigneth certain houses to be repayred, but he that is bound hath no knowlege of that assignement, that ignorance shall excuse hym in the lawe, for he hath not bounde hymself to no reparations in certayn, but to such as the party wyll assigne and yf he none assigne he is bound to none, & therfore lyth he that should make the assignement is privye to the dede he is bound to geue notice of his owne assignement, but if the assignement had been appointed to a straunger then the obligour muste haue taken knowlege of the assignement at his peryl. Also if a mā bye landes wherunto another hath title which the byer knoweth not, that ignorance excuseth hym not in the lawe no more than it doth of goodes. Also yf a seruant come with his masters horse to a towne that by custom may attache goodes for det, and vpon a plaint against the seruant, an officer of the towne by informacion of the party attacheth the masters horse thynkyng that it wer the seruauntes horse, that ignorance excuseth hym not, for whan a man wyll do an act as to enter into lande, seale goodes, take a distresse or suche other, he must by the lawe at hys peryl see that that he doeth be lawfull

note qui est obligé, doit ne pas faire e commissal par pur. ignorance ne doit pas estre a-

Assignement al estraunger.

note.

ne as in that cale before rehearied. And in the
e of a sherife by a replevin deliuer other beastis
han wer distrayned, though the party that dyd
rayned shewed hym they wer the same beastes,
an accio of trespas lyeth against hym, & ygnor-
nce shall not excuse hym, for he shalbe cōpelled
the law as al officers commonly be to execute
e kynges writ at his peryl accordyng to the te-
our of it, and to see that the act that he doeth be
rfully done. But otherwise it is after some mē
pon a somons in a precipe quod reddat the
rife by informacion of the demaundans somo-
th the tenant in an other mannes land thynkig
for the tenantes land there thei say he shalbe ex-
ed, for in that case he doth not seise the lande
take possession in the land, but only doth somō
tenant vpon the lande. and the writ cōmaun-
hym not that he shall somon the tenant vpō
s own lande but generally that he shall somon
m, and namely not in what lande and than by
olde maxime in the law it is take that he shal
mon hym vpon the land in demaunde, and ther-
e though he mistake the lād and ygnorāunt
it, yet if the demaundaunt enfourme hym that
is the land that he demaundeth that iustifieth
the sherife as to his enter for the somonyng as
y say, though it be not the tenantes. And here
make an ende of these questions for this time.
. I pray the yet ere we depart take a litle more
ye at my desyre.
what is that. D. That thou wouldest
ew me thy mynde in diuers cases of the law of
e realm, which as me seemeth stād not so clerely
wyth

Summ en an
ter tor.

with conscyence as they should do. And therfo
I would gladly here thy conceit therin how
may stand with conscyence. S. Put the cas
and I shall with good will saye as I thinke
therin.

Addicion.

The fyfth question of the Doctour. How
the lawe of England may be sayd reasona-
ble that prohibiteth them that be arrey-
ned vpon an inditement of felony or
murther to haue counsayle.

The. xlviii. Chapter.

M. thynketh that the lawe in that poynt
hery good and indifferent takyng the la
therin as it is. D. Why what is the law
thys poynt. S. The lawe is as thou sa
that he shall haue no counsayle, but than the la
is farther, that in all thynges that pertayn to
order of pleadyng the iudges shall so instruct hy
and so order hym that he shall renne into no
pardy by hys mispleadyng, as yf he wyll plea
that he neuer knewe the man that was slayne,
that he neuer had a peny worth of the good
that is supposed that he should stele in theis ca
the Iudges are bound in conscyence to informe
hym that he muste take the generall yssue & plea
that he is not gilty, for though they be set to be
differens betwene the kyng and the partye as
the party as to the principall matter as they
is

al other matters yet they be set in this case to
that the party take no hurt in fourme of plea-
ing in such matters as he shal shew to be ꝑ truth
the matter, and that is a great fauor of the law
in appell though the Justices of fauour wyll
ofte commonly helpe forth the party and some-
time his counsayle also in the fourme of pleading
ther do also many tymes in common pleas, yet
they might in tho cases yf they would byde
the party and his counsayle pleade at theyr peryl.
but they may not bde so with conscyence vpon
enformentes as me semeth, for it were a grete vn-
reasonablenes in the law yf it shoulde prohybite
him that standeth in ieopardy of hys life that he
should haue no counsayle, and than to dyrect hym
to pleade after the straite rules and formalitye of
the law that he knoweth not. D. But
what yf he be knowen for a common offender, or
that the iudges know by examinacion or by an e-
uident presumpcion that he is guilty and he asketh
iudgmẽt, or pleadeth mainoner or hath some re-
son to pleade that he cannot pleade after the
fourme. May not the iudges in such cases byd hi
pleade at his peril. M. I suppose that they maye
not, for though he be a common offender or that
he be guilty, yet he ought to haue that the lawe ge-
uen hi, & that is that he shal haue the effect of his
plea and of his matters entred after the fourme
of the law, & also fortune a mã by examinaciõ & by
euidẽce may appere guilty ꝑ is not. And likewise
there may be a behemẽt suspicio that he is guilty
& yet he is not guilty, & therfore for such suspi-
cions or behemẽt presumpcions methinketh a man

may

Appell vpon
inditement
of felony
Appell vpon
Indictment

may not with conſtrycte be put fro that he ought
to haue by the lawe: ne yet al though the Iudges
knewe to it of theyr owne knowledge. But if it were
in appele I ſuppoſe that the iudges might do that
in as they ſhould thinke beſt to be done in conſci-
ence, for there is no lawe that byndeth them to in-
ſtruct hym, but as thei doe commonly the partie
of fauour in all other caſes but they may if the
ryght byd them pleade at theyr perill by aduyſe of
theyr counſayle, and if the appele be poore and
no counſayle. the court muſt aſſygne hym counſay-
le he aſke it not thei muſt do ſo al other places, and
that me thynketh they are bounde to do in conſci-
ence though the appele were neuer ſo great an of-
fender, and though the iudges knewe neuer ſo ma-
tayntly that he were gylty, for the lawe byndeth
the to do it. And ſo me thynketh that there is no
diuerſitie betweene an indict and an appele. And
the reaſon why the lawe prohibiteth not counſay-
le in appele as it doth in an inditement I ſuppoſe
is this. There is no appele brought but that of
common preſumpcion the appellaunt hath grete
malice againſt the appele. As whan the appele
is brought by the wife of the death of her husbande
or by the ſonne of the death of hys father, or that
an appele of robbery is brought for ſtealyng of
goods. And therfore if the iudges ſhould in ſuche
caſes shew themſelf to inſtruct the appeles. The
appellauntes would grutche and thinke they were
craft, and therfore as well for the indemnyte of
the countas of the appele in caſe that he be not
gylty the lawe ſuffreth the appele to haue counſay-
le but whan that a man is indicted at the kynges
ſuite

ake the king intendeth nothing but iustice with
noz and that is to the rest and quietnes of hys
ryghtful subiectes, & to put away misdoers amog
em charitably, and therfoze he wyll be contem-
d that his iustices shall helpe fooxth the offen-
ers accoxdyng to the trouth as farre as reason
d iustice may suffer. And as the kyng wyll be
ntented therein: it is to presume that his coun-
e wyll be contented. And so there is no daunger
ereby neither to the court ne to the partye, and
I suppose foz this reason it began that they
ulde haue no counsaple vpon subtylementes
d that hath so long contynued that it is now
owen into a custome and into a maxime of the
w that they shall none haue.

viage q̃ mal
pour sale
Zudgement

But if the iudges know of their own knowl-
ge that the inditer is giltye, and than he plea-
h misnomer oz a recoxde that he was autre
eiz arrayned and acquite of the same murther
felony, and the iudges of theyz own knowlage
now that the plee is vntrue: may they not than
m him plede at his peryll. ℣. I thinke yea,
y if they knew of their own knowlage that
wer gilty of the murther oz felony, but that
plee was vntrue they knew not but by cun-
ture oz informacion I thynke they myght not
m byd hym plede at his peryl.

¶ The second question of the Doctoz whe-
ther warraty of ꝑ yõger brother that is ray
d as heire became it is not knowē but
that the eldest brother is dead, be in
conicyence a barre vnto the el-
der brother as it is i the law.

¶ The. xlix. Chapter.

A Man seised of lande in fee hath issue two sonnes the eldest sonne goeth beyond the sea and because a common voyce is that he is dead the ponger brother is taken for heyre, the father dyeth the ponger brother entreth as heyre and alyeneth the lande with a warrantye, and dyeth without any heyre of his body, and after the elder brother commeth agayn and claymeth the lande as heyre to hys father, whether shall he be barred by that warrantye in conscyence as he is in the law.

D. It is a maryme in the law that the eldest brother shal in that case be barred. And that maryme is taken to be of as strong effect in the lawe as if it wer ordeined by statute to be a barre. And it is as olde a lawe that such a warrantye shall barre the heyre as it is that the inheritaunce of the father shal onely discende to the eldest sonne. And yet the lawe so is why should not than conscyence folowe the lawe as well as it doth in this poynt that the eldest sonne shall haue the lande.

D. For there appeareth no reasonable cause wherupon the maryme myght haue a lawful beginning, for what reason is it that the warrantye of an auncestor that hath no ryght to lande that should barre hym that hath ryght. And yf it wer ordeyned by statute that one mā should haue another mannes lande and no cause is expressed why he should haue it, in that case though he myght holde the lande by force of that statute, yet he could not holde it in conscyence without that

wer

where a man myght hope he should have it and these
cases be not lyke as me seemeth to the fortune
of goodes by an out lawrye, for. ¶ My reason
doth agree that that fortune standeth with
conscience because it is ordeyned for punishment
of malice, but ¶ I cannot perceyue any such cause
wherefore me thinketh that this case is
lyke to the mariture that lyes at the comon lawe
of wrecke of the see, that is to say that if a man
were goodes had ben loozeched upon the see that
the goodes should have ben immediately forfeyted
to the kyng. And it is holden by all doctours
that that lawe is against conscience wrought ex-
pressy for that cause that were so longe to reherse now
And it was ordeyned by the statute at westmin-
ster the fyrst that ye haue Dogge. ¶ Cat come alone
to this lawe that the owner if he proue the
goodes within a yere & a day to be hys that maye
then inherite the same lawe of wrecke of the
see is made more fauourable than it was before
¶ Now thinketh me in this case that this malfeasance
is no barre in conscience though it be a barre in
the lawe. ¶ I pray thee lay ye case of wrecke
of the see in the remembraunce and put it for an
exemple one of thy questions wherupon shall me
more fruytfully reporte them, and ¶ I shall lowly good
myne fyrste reporte, and now to this case I
thinke it reason me thinketh the maryner where
the marchaunt proue a barretz good and reason
able forfeyture lawfully not against reason that
they make bounde goodes to recompense all thinges by
them delyuered vnto whome he is beyng
bounde as by the lawe it is ordeyned that he

shall haue aduauntage by the same auncestre and haue all his landes by discent if he haue any right so it seemeth that it is not vnreasonable though the law for the puryty of bloud that is betweene them suffre hym to haue a defendaunt tage by the same auncestre but if the maxime were that yf ange of his auncestres though he were not heyre to hym made suche a warrauntye that it should be a barre I thynke that maxime were ageynst conscience for in that case there were no grounde nor consideracion to proue holde the sayd maxime should haue a lawful begynnyng wherefore it were to be taken as a maxime a gaynst the lawe of reason, but me thynketh it is otherwyse in this case for the reasō that I haue made before. D. If the father bynde hym & his heyres to the payment of a dette and dye, in that case the sonne shall not be bounde to pay the dette vnckes he haue alles by discent fro his father. And so I wolde agree that if that man had alles by discent fro the auncestre that made the warrantie that he should haue be barred, but els me thynketh it should stande harde with conscience that it should be a barre. D. In that case of the obligacion the lawe is as thou sayst, and the cause is for that the maxime of the lawe is that cast is none other but that he shulde charged if he haue alles by discent, but if the maxime had ben generall that the heyre shulde be bounden in that case without any alles, yf it were ordeyned by statute it should be so, I thynke that bothe the maxime and the statute should hold stande with conscience. And that

taine is where a man is bounden as heyre, he may entre as he that hath nothyng by discente but where he clayme the lande in hys owne right there the warrantie of hys auncestre shalbe a barre to hym though he haue no assets frō the same auncestre, and though it be sayd in Ezechiel the. xviii. chapitre. That the sonne shall not bere the wyckednes of the father, that is vnderstāde spiritually. But as to temporal goodes the opinion of doctours is, that the sonne sometime may bere the offence of his father. Now that I haue heard the mynde in this case. I will take aduysement therin vntil a better leyser. And wyl now procede to another question. I praye the doctour thanne sayde I, that with good wyll make answere therto as wel as I can.

¶ The thyrde question of the Doctour. Yf a man procure a collateralle warrantye to extincte a right that he knoweth another man hath to the lande, whether it be a barre in conscience as it is in the law or not.

¶ The .4. Chapitre.

A Man is dissesed of certayne lande the dissesoure setteth the lande &c. the auncestre knowynge of the dissesou obtayneth a release with a warrantye of an auncestre collateralle to the dissesye that knoweth also the ryght of the dissesye. The auncestre collateralle dyeth after whose deathe the warrantye descendeth vpon the dissesye, whether maye the dissesye in that case holde the lande in conscience

ence as he may by the law. ℣. Sythe the was rampe is vttered vpon him whereby he is hurt ded in the law me thynketh ꝙ he shal also be hurt ted in conscience, and that this case is lyke to the case in the next chapitre before, wherin I have sayd that as me thynketh it is a barre in co science. ℟. Though it myght be taken for a bar in conscience in that case, yet me thynketh in this case it cannot, for in ꝙ case the yonger brother entred as he the knowing none other but that he was heyre of ryght, ꝙ after whan he solde the lande the hyer knew not but that he that solde it was good ryght to sell it, and so he was igno rant of the title of the eldest brother and that ꝙ ignorance came by the vertuous and absence of his self that was the elder brother. But in this case as well the hier as he that made the collateral warrantye, knew the ryght of the dyssesed and wyst that they could not entre the ryght, and so they saw all they wolde not should hurte be done to them, and so it semeth that he that hath the lande may not with good conscience kepe it. ℣. Though it be as thou sayst that all they offen ded in optayning of the sayd colateral warran tie, yet the offence is not to be considered in the law but it be in very speciall cases, for if they alegations ꝙ wold be accepted in the law, rebel lyes and other wytnesses shuld be of smalle effecte, ꝙ vpon every ryght surmyse al wytnesses myght come in trayll whether they were made with conscience or not. ℟. Perhaps to auoyde this inconuenience the law wyll dryue the partye to answere onlye whether is be his dede or no, ꝙ not whether the dede were made with consci

nace or agaynst conscience, and though the par-
tie maye be at a mischefe therby, yet the lawe
hath rather suffre that mischef than the sayd in-
conuenitie. And like lawe is it a woman coueryd
for the debt of her husbande by compulcion of hys
lawe a fyne, yet the woman after her husbandes
death shall not be admitted to shewe that matter
to auoyde the fine for the inconuenience
that might folowe therupon. And after the opi-
nion of many men there is no remedye in these
cases in the Chauncerye for they say that where
the common lawe in cases concernynge enheri-
taunce putteth the partye fro anye auermente
for eschewyng of an inconuenience that might
folowe of it amonge the people, that if the same
inconuenience should folowe in the chauncerye
of the same matter might be pleaded there that
no sub pena should lie in suche cases, and so it is
in the cases before rehersed. For as muche ver-
acion, delay, costes, and expences myght growe
to the partye if he should be put to answere to
such auermentes in the chauncery as if he were
put to answere to them at the common lawe and
therfore they thinke that no sub pena lieth in the
sayd cases ne in other like vnto them. Neuer-
theles I doe not take it that their opinion is
that he that bought the lande in this case maye
with good conscience holde the lande because
he shal not be compelled by no law to release it,
but that he is in conscience and by the law of reā-
son bounde to release it or otherwyse to recom-
pence the partye so as he shalbe contented and
I suppose verelye it is so if he well kepe hys

soule out of peryll and daunger. And after some men to theyse cases may be resembled the case of a fine with none clayme that is remembred before in the xuii. Chapitre of this booke, where a man leasynge another to have ryght to reteyne lande causeth a fine to be leuied therof with proclamacion and the other suffreth the yeres to passe without clayme in that case he hath no remedy neyther by common law nor by sub pena, and that yet he that leuyed the fine is bounde to reslore the lande in conscience. And me thynketh I could right well agree that it should be so in this case, that specialye, because the party himselfe knoweth perfectye that the sayd colaterall warranty was obteyned by open and agaynst conscience.

¶ The fourth question of the doctour is of wreche of the sea.

¶ The.li. Chapitre.

I Pray the let me now here thy mynde howe the lawe of Englande concernynge goodes that be wreched vpon the see maye stande with conscience for I am in great doubt of it. D. I praye the let me fyrst heare thyne opinyon what thou thynkest therin. D. The statute of westminstre the fyrst, that speketh of wreche is, that if any man borge, or catte come alyue to the lande out of the shippe or barge, that it shal not be iudged for wreche so that if the partye to whome the goodes belonge come within a yere & a daye and proue them to be his that he shall haue them or els that they shall remayne to the kyng. And me thynketh that the sayd statute standeth not

with

lyeth conscience, for there is no lawfull cause why the party ought to forfeit his goodes ne that the lorde or lordes ought to have thē, for there is no cause of forfeiture in the partye but rather a cause of sorow & heuines. And so that law seemeth to adde sorowe vpon sorowe. And therfore doctours holde comonly that he that hath such goodes is bounde to restitucion and that no pardone may helpe for they say it is agaynst the commaundement of God. Le.xix. where it is commaunded that a man shall loue his neyghbour as hymselfe, and that they say he doth not that taketh away hys neyghbours goodes but they agree that if any man have cost and labour in the sauyng of suche goodes wrecked specially suche goodes as wolde perysshe if they laye styll in the water, as lyger, paper, salt, spele, and suche other, that he ought to be alowed for his costes and labour but he muste restore the goodes except he coulde not saue them bythout puttynge hys lyfe in ieoperdy for them, and thā if he put his life in such ieoperdy & the owner by colour presumption had no way to have saued them thā it is more comonly holden that he may kepe the goodes in conscience, but of those goodes that wolde not so lightly perysshe, but that the owner might of common presumption saue them himselfe or that myght be saued without any perill of lyfe, the takers of them be bounde to restitucion to the owner whether he come within the yere or after the yere. And me thinketh this case is somewhat like to a case that I shal put, if there were a law

q. Sara wife of K. Dauid. 2. Reg. 6. Prou. 6.

and a cuſtome in this Realme yͭ if it were ordeyned by ſtatute that if any alien came through the Realme in pylgrimage and dyed, that all his goodes ſhould be forfeit, that fain ſhould be good conſuete for there is no cauſe reaſonable why the ſayde goodes ſhould be forfeit. And nowaday me thynketh there is of wrecke.

Estrays

Here be diuers caſes where a man ſhall leſe hys goodes & no defaute in him, as where beaſtes stray a way frō a man and they be taken vp and proclayned and the owner hath not heard of them with in the yere & the day, though he make ſufficient diligence to haue heard of them, yet the goodes be forfeit and no defaute in him, and ſo it is where a man killeth another with the ſworde of that ſkyle the ſworde ſhalbe forfeit as a deodande and yet no defaute is in the owner, and me thynketh it may be in thys caſe, and yͭ lyke the cōmon law before the ſayd ſtatute was that the goodes wrecked vpon the ſea ſhalbe forfeit to the lorde that they be alſo forfeit nowe after the ſtatute except they be ſaued by obſeruyng the ſtatute, for the law muſt nedes reuoke the property of all goodes to ſome man and when the goodes be wrecked it ſeemeth the property is in no man but admitte that the property remayne ſtyll in the owner, yͭ is of the owner peraduenture he neuer clayme them it ſhould not be reaſon to take away his goodes & make them forfeit where no man ought to take them and is maner they be diſtroyed & no poſſible cōmodite of them, wherfore me thynketh it reaſonable that the lorde ſhall ſo clayme who ought to haue yͭ, and that yͭ ſhall be ſayd appropried to the king as ſouereigne & ſuch

deodands

quest

ver the people. D. In the cases that thou
alle put before of the straye and verdaunt there
be consideracions whe they be forfeyt, but it is
not so here, and me thynketh that in this case it
were not unreasonable that the law shuld suffre
ony man that wolde take them to take and keep
them to the vse of the owner, sauynge his rea-
sonable expences, and this me thynketh were
more reasonable law than to put the playntyfe
out of the owner with out cause. But yf a man
in the meane tyme goody out of the fyre as for
them there beestes, I holde that euery man may
take them to his vse, that will, but yet maye it
also they say of the thynge that out for fere of they
should ouercharge the shyppe.

S. There is no suche law in this Realme of
goodes forsaken, for thoughe a man leese
the possession of his goodes and shyppe he for-
faiteth them, nor by the lawe of the Realme the
property remayneth still in hym, and he maye
take them after when he will, and if ony man
in the meane tyme put the goodes in sauegarde
to the vse of the owner. I thynke he dothe lawe
full and that he shalbe alowed for his reasona-
ble expences in that behalf as he shalbe of goodes
ony founde, but he shall haue no property in the
goodes than in goodes founde. And I wolde
fayne that it were enacted that if he founde ony
goodes within his manor that he shuld haue
them as his owne: that that preheminence were
large, for there is no consideracion how that pre-
heminence myght haue a lawefull begynninge. But
in this case me thynketh there is D. what is the

D.

D. It is trew. The kyng by the olde custome of the Realme as lord of the narow sea is bounde to kepe it clene to scour the sea of pyrates and to hit robbers of the sea. And so it is redde of the noble kynge kynge Edgare that he wolde ryde on the yere scour the sea of suche pyrates. But I meane not therby that the kyng is bounde to defende marchantes vpon the sea ageynste all outwarde enemies, but that he is bounde onely to put away suche pyrates and petyte robbers. And bicause that cannot be done without grete charge it is not vnreasonable if he haue suche goodes as he speeched vpon the scauage to that charge. D. Vpon that reason I will take a respite tyll another time.

¶ The.li. question of the Doctour whether it stande with conscience to prohibit a Jury of meate and drinke tyll they be agreed.

¶ The.lii. Chapitre.

IF one of the xij. men of an enquest knowe the very trouth of his owne knowlege and instructeth his felowes therof: & they will in no wyse giue credence to hym, and therupō by meate and drinke is prohibit them: he is driuen to the point that eyther he must assent to them and giue the verdite ageynst his owne knowlege and ageynst his owne conscience, or els for lacke of meate, how may that law thē stande with conscience that will drive an innocente to that extremitie to be eyther forsworne or to be famished & die for lacke of meat. D. I take not the law of the Realm to be that Jurie after they be

Troy in corse

ſuſtaque may not eate nor drinke tyll they be
agreed of the verdite: but trouth it is there is a
ſtatute and an olde cuſtome in the lande
that they ſhall not eate nor drynke after they be
ſworne tyl they haue geuen theyr verdyct with
out the aſſent and licence of the Juſtice, & that
is ordeyned by the lawe for eſchuyng of diuers
inconueniences that myght folow therupon, and
that ſpecially if they ſhould eat or drinke at the
coſtes of the parties, and therfore if they do the
contrary it may be layde in arreſte of the iudge-
ment, but with the aſſent of the Juſtices they
may bothe eate and drinke as if any of the Ju-
rors fal ſick before they be agreed of theyr ver-
dict ſo ſore that he may not common of the ver-
dict, thē by the aſſit of the Juſtices he may haue
meate and drynke and alſo ſuche other thynges
as be neceſſary for hym, and his fellowes alſo as
they ſtande coſtes or at the indifferent coſtes
of the parties if they ſo agree by the aſſente of
the Juſtices may bothe eate and drinke and then
yf the caſe happe that thou now ſpekeſt of
and that the Jury can in no wyſe agree in theyr
verdict, that appereth to the Juſtices by exa-
mination the Juſtices may in that caſe ſuffre
them haue bothe meate and drynke for a tyme
to aſſayer whether they will agree, & if they will in
no wyſe agree: I thinke that Juſtices may ſee
ſuch order in it as may ſeme to thē by theyr
diſcretion to ſtand to truth & equitie by awardinge
of a new enqueſt & by ſettyng fines vpon the firſt
Jury that ſhalbe founde or otherwiſe as they
with thynke beſt by theyr diſcretion and

mat

es they may do if one of the Iurie dye before
he geue his verdict: the calamities fall in that ca-
se. But what the iustices ought to do in this
case that them haue put by theyr discretion:
I will not vent of at this tyme.

¶ The.liii. Question of the Doctour whether
the colours that be geuen at the common
law in assises, actions of trespas, & dy-
vers other actions stande with con-
science because they be moste cō-
monly feyned and be not true

¶ The.liii.Chapiter.

I pray the let me here thy mynde to what in-
tent suche colours be geuen, and sythe they be
commonly vntrue how they maye stande with
conscience. D. The cause why suche colours
be geuen is this, there is a maxime and a grou-
de in the lawe of England, that if the defendant
repli in any action pleded a plee that amounteth
to the generall issue that he shalbe compelled to
take the generall issue, and if he will not, he shal
be condemned for lacke of answer, and the ge-
nerall issue in assise is, that he that is named the
disseisour hath done no wronge nor no disseisin.
And in a writte of entre in the nature of assise
the generall issue is that he disseised him not. In
an action of trespas that he is not guylty. And
in euery action hath his generall issue assigned
by the lawe, the tenant must of necessitie eyther
take that generall issue, or pleade some plee in
barre of the writ, to the variation, to the per-
son, or else some barre of some matter by way of
conclusion. And therfore if Iohn at styles vnlaw-

Henry

henry hede of lande and a straunger bringethe
an alike agaynst the layde Henry herte for that
whose whole title he knowyeth not. In this case
he should be compelled to plede to the poynt
of the alike, that is to saye, that he hath done no
wronge ne no dissesion the matter should be put
to the inquest of xii. laye men whiche be not
learned in the lawe, & therefore better is to plede
into bee so ordered that it be put in the better
discretion of the iudges than of laye men. And if
the layde Henry heir in the case before rehersed
wolde plede in barre of the alike that Johan de
Stile manumitted and infeoffed him, by force whereof
he entred and alked iudgement if that alike
ought to be ageynst him that plee were not good
for it is unconvenyently put to the generall alike & there-
fore he maye be compelled to take the generall alike
or els the alike shalbe awarded ageynst him for
lacke of answere. And therefore to the matter
latter maye be sayed and pled before the iudges
rather than before the Jurye, the tenaunt
may to gyue the playntife a colour, that is to saye
colour of accion whereby it shall appere that it
is to his profyt to the tenant to put that matter
and he giveth to the iudgement of xii. men, for
the moste common colour that is used in suche
case is, whan he hath pleded that suche a man
infeoffed him as before appereth it is used that
he shall plede further and saye that the playntife
claymeth by a colour of a dede of feoffement made
by the said feoffour before the feoffement made
to him, where nought passed by the dede whereby
upon whome he entred and alked iudgement if the

[illegible]

the same he against hym. In this case, because it appeareth to be a doubt to vnlerned men whether the lande passe by the dede without liuerey or not, therfore the law suffereth the tenaunt to haue that speciall matter to hynge the matter to the determinacion of the Judges. And in such case the Judges may not put the tenant from the plee, for they knowe not as Judges but that it is true, and so if any defaute be, it is in the tenant and not in the court. And though the tenaunt say that there were no suche dedes of feoffement made to the plaintife as the tenaunt pleadeth yet me thinketh it is no defaute in the tenaunt for he dothe it to a good intent as before appereth. If the tenaunt knowe that the feoffement made no suche dedes of feoffement to the plaintife, than there is a defaute in the tenaunt to plede it, for he wittingly sayth against the truth and it is holden by all doctours that euery lie is an offence more or lesse for it is be of malice and to the hurte of his neighbour, than it is called (Mendacium pernitiosum) and that is deadly sinne. And if it be in sporte and to the hurte of no man nor of custome vsed, ne of pleasure that he hath in lienge, than it is venial sinne, and is called in latine mendacium tocosum. And if it be to the profite of his neyghbour and to the hurte of no man than it is also venial sinne, and is called in latine mendacium officiosum. And though it be the leest of the three yet it is a penial sinne and must be eschewed. ¶ Though the men of Egipte lied when they had reserued the male children of the Ebrewes saying to the

lynge

...ge (I saye) that the Egyptians had deserued
...t leave conuenyent in the same craft wherin
...they came had deserued the children of Israel
...here in dede they themselfe of parte & of dede
...god reserued them, yet sayne Jerome by poste-
...ly the text folowynge wherin he sayth that god
...gaue therfore gaue them houses that is to be
...derstande that he gaue them spirituall houses
...d that they had therfore eternal reward, and
...they sinned by that ye al though it leave pun-
...ysshment, yet I cannot se how they should haue
...therfore eternall reward. And also of a man is
...nowynge to slen another all me where that
...man is, is it not better for me to tye and to lape
...I cannot tell where he is though I knowe it,
...l to shew where he is, wherupon murther
...ould folowe. D. The dede that the myd-
...wyfes of Egipt did in sauynge the children were
...rtuous and deserued reward eternall (yf
...they beleued in god) & yet good dedes besyde
...f it is to presume they did, whan they for the
...e of God refused the death of the Innocents
...s than though they made a ye after which
...was but venyall synne that could not take fro
...them they reward, for a venyall synne yet
...but very extreme charite but neuertheles
...ur therof gotherfore it may well stande with
...e wordes of sayne Jerome that they had for
...good dede eternal houses, and yet the ye
...that they made to be a venyall synne, but neue-
...theles it such a ye that we ought rather eternal pu-
...nysshed is another, it is almost impossible that we
...shall be fall that he sheweth. And as to the other
...question

better ye truth to be lefte by reason: than ye truth to be spoken of reason.

queſtion it is not lyke to this queſtion: that he
haue in hande as me ſemeth, for ſometyme a man
for eſchewynge of the greater ſynne maye haue a
leſſe ſynne, and this the leſſe is no offence in him
and ſo it is in the caſe that thou haſt put wherin
becauſe it is leſſe offence to ſaye he wotteth not
where he is though he knowe where he is than
it is to ſaye where he is, wherupon manye
ſhoulde folowe, it is therfore no ſinne to ſaye he
wotteth not where he is, for euery man is bounde
to ſaue his neyghbour and eſchue in the
caſe where he is knowynge his deathe ſhoulde fo-
lowe therupon, it ſemeth that he dyued him not
ne that he dyd not to hym as he wolde he ſhoul-
de do, but in the caſe that we be in here, there is
no cauſe ſinne eſchewed for though the partie
pleadeth the generall yſſue the Jury myght fynde
the trouth in euery thynge, and therfore in that
he ſayth that the playntife claymynge in the
quyour of a dede of feffement where nought paſ-
ſed entred, knowynge that there was no ſuche
feffement it was a lye in him and a venial ſinne
as me thinketh. And euery man is bounden to
eſchue a deadly ſynne in his neyghbour, rather
than a venial ſinne in himſelfe. Ad. Though
the Jury vpon the generall yſſue may finde the
trouth as thou ſayeſt, yet it is muche more ha-
gerous to the Jury to enquyre of many poynts
than to enquyre onely of one poynt. And ſup-
poſe muche ne euy lyeth vpon the generall commaun-
dement to euery man vpon his neyghbour, therfore
euery man is bounde to ſaue euy man in
ſo that by him no preiudice of offence ſhoulde

neighbour. And for the same cause, the laws hath ordayned diuers maryages and gyftes of diuerse offices in the kynges court may be forseth and one poynt in certain as myght as may be. & not generally, and offence, myght folowe therupon as peryll, rud. & shurt also longe the Iury, wherfore it semeth that he loueth not his neighbour as himself, ne that he doth not as he ought he bounde to, that offreth such daunger to his neighbour where he may wel and conuenyently kepe it from hym. for he may folowe the order of the law, and it semeth y he putteth hymself wilfully in ieopardye y aduertyse and it is written of eche that in that matter mencion is made perille, that is to say, he that loueth peryll shall perish in it, and he that putteth his neighbour in peryll to offende putteth himself in the same and so semyth he by me semeth that would wilfully take the generall pleine where he might conuenyently haue the speciall matter, and furthermore it is none offence in princes any rulers to suffer contractes and byeng and selyng in markets, fayres, though both perilly and discepte myght folowe therupon, because such contractes be necessary for the common welth, so it semeth likewise that there is no default in the party y pleadeth such a speciall matter to auoyde fro his neighbour the daunger of perjury, he yet in the courte though they inforce him so to, as they do concerning the intent before rehersed, and in like wyse semeth myght haue that it myght of cities and communalties semet vse for the punishment of theues, murtherers, and such other offenders, wyll to the

say to them that is suspected that they be informed in such certayn behauiours or misdemeanours in the offendours and that they do to the intente to haue them to confesse the truth, that though they were not so informed that yet it is no offence to say they were so informed because that do it for the comon wealthe, for yf offenders were suffred to go vnpunished, the comon wealth would sone decay and vtterly perish.

D. I wyll take aduisement vpon the reason in this matter tyll another season, and I wyll now aske the another question somewhat like vnto this. I pray the let me here thy mynd therin.

S. Let me here thy question and I shall with good wyll say as I thinke therin.

¶ Addicion.

¶ The. lvi. question of the Doctour concerneth the pleabying in assyse wherby tenauntes vse sometime to plede in such maner that they shall confesse no ouster.

¶ The. lvii. Chapter.

¶ It is commonly vsed as where heyre say that whan the tenaunt in assise pleadeth a fraudulent feoffment sealed and vnsealed vpon and greatly the plaintife counteth in such maner as before appeareth in the. xlvi. Chapter, that the tenaunt many times whan he hath pleaded thus, and the plaintife replyeng vpon the colour of a deed of feoffment made

made by the sayd Stranger, where nought passed by the sayd entred, and that that they the sayd Stranger vpon whom B. entred vpon vnlawfully the tenant entred, where in deede the sayd B. was neuer entered, nor happily there coulde neuer be such matter, for we can thus plainely be certain of an vntruth, and wherefore should we take the way of such a pleading, should be assigned against the truth: Sir. What cause why that manner of pleading vnlawfull is this? If the tenant by his pleading confessed an immediate entry vpon the plaintyffe or an immediate putting out of the plaintyffe which in truth is called an ouster, that is the tenant by his plea confessed all holly for the plaintyffe herein: by his plea was ouster is verefuted of the disseisin. And because in truth is that though the plaintyffe haue good title and the tenant by his plea confesse no disseisin. Yet peraduenture the tenant hath but many times to plead in bar, for he hath sayd before, so farre therein confessing of an ouster, and so yf there be any default in the sayd plea it is not in the court to iudge in the tayle for they know not the truth therin yet it betweene, and the tenant also that there is in this case a right title, default or none in the tenant nor in his sayd plea, specially of the contempte knowe that the tenant is no disseisor. But as to that point saying the thyrde he saith thou shalt enter a scripta to him and he by that thou shalt thy full right by fyne, sayd thou shalt haue a writte of entre sur cui in vita, whereof mention is made in the sayd statute, whereupon thou shalt haue a writte to the escheat in this case shall not serue, but thou shalt haue a writte of entre sur disseisin in the post, and shall recouer thy full right by the writte sayd

Wife. I am content it: but then shall you pray
the that I may yet adde another question to that it
questions before rehearsed of the estimation of the
will signifie ought therein, because that to worthy
which the same effect that the other be: that is
to say, in what time the power of the ginger shall
strike in the water before that he against the
wound, and I pray thee tell me herein how thou
understandest all these questions, and then shall thou
make a good wyfe smarte myne. Husb. I pray
the answer me the rule that thou speakest of
to. Wife. Sir, sith ye desire me secretly in this
matter: I take him that shine upon us shall testify
of my true fact, and it is plain that in this in-
dictment it shall be supposed that he such a day &
place moved, riots and armes, that is to say, with
staves, daggers, and knives, &c. feloniously stirred
the people against the kinges peace, & that so many
such persons in every indictment, though the felo-
nies be not expressed nor set forth upon what
time or time certain they should have committed
crime it therefore be not void, but that therein is no
uncertainty. Husb. It is not alleged in the
Indictment by matter in fact that he had such
malice afore the time of an Indictment in this
manner: ipse dominus Rege si &c. tali die &
anno apud talem locum &c. et armis predictis
gladiis &c. eorum regem talia proditoria felonice
crudeliter machinando &c. he might shew
good cause why the Indictment should be void.
Wife. Sir, I suppose that it be sufficient as it is,
for it is not necessary to allege any such matter
as the Indictment specially sayeth, and so when they say

(bills were)

regard the effect of the bil and not the

Wherefore I am content it be as thou saist but I pray the that I may yet adde another question to the questions before rehearsed of the colours in effect and thing ingendered therin, because that he worthy which be the same effect that the other be thus: I suppose you praise that the same power and vigour shall be in the table to be painted that be against the enemy, and I pray thee tell me hereafter how he ought to do all the qualities, and then shall thou make a good argument myne. Now I pray thee shew me the rule that thou speakest of. Sir, quod he, it is much scale an hepse secretly in the night. It is then that there upon he shall take the colours of his images and it is then that in that instant it shall be supposed that he such a day & place quietly slept and drunk, that is to say, with whom he hath conversed, and knowen of felonously stole the horse against the kinges peace, & that so many men is there in every tabernacle, though the felon had gotten from thence or that he escape with him but that he came secretly without weapon. Nevertheless it therefore be excused but that therein is committed felony. It is not alleged in the Indictment by matter in fact that he had such like pain for the feature of an Indictment in this Inquisitum est pro Domino Rege si A. talis die & anno apud talem locum de et armis predictis felonice & furtim equum talis hominis felonice cepit & abduxit & tamen non dicit quod equus talis hominis fuit infra custodiam talis ballivi vel talis constabularii &c. Et sic in casu

(bills pena)

(Bille there) they lay vnto the charge to the effect of the bill to be. And therefore if there were matters in the byll of misdemeanor and the Iury saith (Bille vera) for there be matters of fact, for matters of record, and to the validity or falsitie of the euidence due to the Iurors, and to the points of the verdict due to the office of the Iudge, and therefore is to inquyre whether there were any such matters alone by vertue of their oath, or (as they) charged to make the bare fact, and also to the Iudge there to pray the benefit of the statute, or else to demand iudgement of the bill, and the Iudge may not fro the Iurors take the verdict vpon the bill, but the Iurors (bene vera) that is true, and then the Iudge (culpabilis) guilty, for they are charged to giue their verdict according to the effect of the bill, and not to the validity of the matter, and therefore if they find the matter of the bill, but not the felonie, they ought to find the party not guilty, for they are not charged to inquire of the felonie, but of the matter of the bill

The.liii. question of the Doctour

whether the statute of .xiii. of Ed.

touch the liberte of holy church

but stand with conscience.

The.liv. Chapter.

In the .xiii. yere of the reigne of king Edward the third, it was enacted that a prohibicion should lye where a man is impleded in the court Christen for tithes, or matter of the age of .xl. yeres or above by the name of tithes ceruin, how may that statute stand with conscience that is to say that it shall be lawfull to the temporall courte to medle with the liberte of the churche & that by vertue of such statute & the iugdgmentes had vpon the same?

Answere. The statute was made vpon good grounde & reason, for it was enacted by the same statute that if any prohibicion were sued in any such case, and pendyng the prohibicion the partie sued to the temporall courte, and the partie complayned to a spirituall iudge that sued the prohibicion, that then the statute gaue a continuacion of the same courte.

Doct. If there were such a statute that gaue a continuacion of the same courte, that spirituall iudge that graunted the prohibicion, yet he that procureth the payment of tithes of the age of .xl. yeres or above, & pursueth the same in the temporall courte, as well vpon the lawe of the realme as vpon the lawe of conscience, is not to be punished vpon the lawe of treason and premunire, for he hath no prohibicion as it is before supposed.

Ans. That there was such a prohibicion before the said statute, & that if a tithe before the said statute had ben sued in a spirituall courte for tithes of the age of .xl. yere or above, that prohibicion had

[illegible] appered

appeareth in the holy Scripture, and it cannot be
thought that the Parliament is made by authority
of the whole realme, as well for the clergy and of
the lordes spirituall and temporall as of all the
commons, will recite a thing against the truth.
And furthermore I shall shew how it can be gro-
ded by the law of god or by the law of reason that
the fifth part should be paid for piety and holy
causes rather then the tenth part of fruites, that
is so ancient and reasonable custom of this realme
temporall to them that minister to you spirituall,
for every man is bound to honour god of
his substance, by reason of which parte
that the clergy was endowed withall people but also
[illegible] given to the churches in England by
[illegible]
[illegible]
[illegible]

nature, which after them that be learned in the
laws of the realme is called the lawe of reason,
that reason is but by all lawes, and in the lawe
betweene the Jewes ever bound to geue the tenth
part to theyr preistes as well by the sayd auowe
of Jacob, as by the lawe of god in the olde testa-
ment called the Judicials. And in the newe lawe
the geuing of the tenth part, is by a lawe that is
made in the church. And the reason wherefore the
sayd tenth is ordeyned by the church to be paid for
the holy thynges this. There is no cause why the
people of the newe lawe ought to pay lesse to the
ministers of the newe lawe, than the people of the
olde testament gaue to the ministers of the olde
testament, for the people of the newe lawe is bound
to greater thynges, than the people of the olde lawe
were bounde vnto. Also, where it is sayd,
that many good workes of ours doone about the
seruice of the church and the holy place may not
be take for the tenth of reason. And the sacrifice
of the olde lawe was not so honourable as the sa-
crifice of the newe lawe is, for the sacrifice of the
olde lawe was onely the figure, and the sacrifice
of the newe lawe is the thyng that is figured, the
body and the bloud of Christ. And therefore the church vpon reasonable consideracion
hath ordeyned, that the sayd tenth part shall be
demaunded of the ministers in the newe lawe, not
alone for the sufficiencie of the ministers, but
also in the lawe with a cause may be
created or augmented to more portion or to lesse,
as shall be necessary for them. It appeareth
further that Abraham gaue to Melchisedech

Decy

the law politine, that is to the lawe of man, & of
the .x. part ther allegned by God than may not a
mile part be allegned by the law of man for that
should be cotrary to the lawe of god, & so it should
be vnryte. And as touchyth that it is not to help
that so famous a clarke would speake any thyng
contrary to the lawe of god, or cotrary to that he
had spoken before, and to proue he ment not by
these decime, that dimes should alway be taken
for the tenth part, as appeareth in the .xiii. part of
his workes in the .xxxii. title, littere, where he
saith thus (Non vocatur porcio curatis debita
decimarum decimacio quod semper sit decima pars
sed interdum vicesima aut tricesima. (That
is to say, the porcion due to curates, is not there-
fore called dimes, for that is alway the .x. part
but sometyme it is the .xx. or the .xxx. part and
is apparent that he thus moonde declinatum, he
ment in the text before rehearsed a certayn porci-
on and not precisely the .x. part, and that that por-
cion should be payed to curates by the lawe of god
to sustayne them with, takyng as it semeth the
lawe of reason in that saying for the lawe of god
as it may one way be vnderstanded and conuenyently ta-
ken because the lawe of reason is geuen to euery
reasonable creature by god. And than it folowyth
euidently that it belongeth to the lawe of man,
to assigne this porcion or that as necessitie shall
require for their sustenaunce, and than his la-
ter speech doth so that that is sayd before, that
is to say, that a certayn porcion is due for paying
the tenth part shall minyster to the lawe of
reason. And than it would folow therupon that

pe

pf it wer ordayned for a lawe that all payinge tithes should fro henceforth ceasse and that euery curate shoulde haue allygned to hym such certayn portion of lande rent or annuitie as shoulde be sufficient for hym & for such ministers as shoulde be necessary to be vnder hym accordyng to the number of the people there, or that euery parysshene or housholder shoulde geue a certayn of money to that vse: I suppose the lawe wer good, and that was the meanyng of Iohn Gerson as it semeth in his wordes before rehearsed, where he sayth, but to chaunge tythes into other rentes by the lawe politique, that is to say by the lawe of man. And so me thinketh that if a hole countrey prescribe to be quite of both tithes of corne & grasse so þ the spirituall ministers haue a litle portion beside to liue vpō, that is a good prescriptiō, & that thei should not offer, that in such countreis payd no tithes, for it wer hard to say that all the mē of Italy or of the East parties be damned because thei pay no tithes, but a certain portion after the custom, that forth certayn it is to pay such a certayn portion as wel they as all other be bounde, pf the church alle it any customs notwithstandyng, but if the churche alle it not, it semeth that by that not alloyng the church refuseth it, and an example therof we may take of the apostle Paule that though he myght haue taken tyth necessary liuyng of them that he preached to yet he toke it not, and neuertheles thei that gaue it hym not, dyd not offend, because he dyd not aske it, but if one man or a towne or a londe would prescribe to be discharged of tithes, of corne & grasse, and not both

tuth this preterigeō is not good onles he cā proue
that he recōpēseth it in another thig, for it is feimetly
to be reasonable that he should pay like for his ex-
ces thā his neighboys do, seig that the spirituall
maisters are bound to take as much diligēce for hī
as they be for any other of the parish, wherfore it
might stād vpon reasō that he should be cōpelled
to pay his tithes as his neighboys do, onles he cā
proue that he paieth in recōpēce therof more than
the .x. part in another thig. Neuertheless I leaue
that matter to the iudgemēt of other, & than for a
further proue that the said preteriperō of not pay-
ing tithes for trees of .xx. yere & aboue, though it
were not good of cōme & gralle should be good, if
we take this reasō, then say that there is no tith but
that is ether a predial tith, a personal tith, or a mixt
tith, & then say that if a tith should be paid of trees
whā they be so sold, that that tith were not a pre-
dial tith, for the predial tithe of trees is of suche
trees as bring forth fruites and encrease yerely,
as apple trees, nut trees, pere trees, and suche o-
ther wherof the predial tith is the apples, nuttes
peres & such other fruites as come of them yerely
whā the fruites be tithed if the owner after sel
the trees, ther is no tith due therby, for it. tithes
may not be paid of one thig, & of these tithes that
I do say, of predial tithes was the cōmaūdemēt
geuen in the old law to the Iewes, as apperely
Deuteron. xxvii. where it is sayde (Omnes decime
terre tam de pomis arborum: quam de frugibus: do-
mini sunt: & illi sanctificantur) that is to say, all
tithes of the earth ether of apples of trees, or of
corne be our lordes, & to hym they be sanctified
and

& though it ſaid into ſpecially only of apples, yet it is vnderſtande of all maner of frutes. And becauſe it ſaith that al the tithes of the earth as of corne & other ſuch frutes, ſeedes, & ſuch other, ſhall alſo be tythed, & that he called by the name of predial tythes, that is to ſay, tithes that come of the ground howbeit they call them onely predialles and duties, and they be the ſame tithes that in thys writing be called mixt tithes, and the other tithes (that is to ſay tithes of apples and corne, & ſuch other) be called predialles immediate, for they come immediately of the grounde, and ſo do not myxt in them openly appeareth.

D. But what thynkeſt thou ſhall be the prediall tythes of elmes, elmes, aſhe trees, alders, and ſuch other trees as beare no frutes, wherof any profite commeth, why ſhall not the x. part of the ſelf thyng be the tythe therof yf they be cut downe as well as it is of corne and graſſe.

M. For I thynke that there is to that intent great diuerſitye betwene corne, graſſe, and trees, and that for diuers conſiderations wherof one is this. The property of corne and graſſe is not to growe ouer one yere, and if it be not myd ye ripe and come to naught, & ſo the cutting downe of it, is the perfection and preſeruacion therof, the ſpeciall cauſe that any encreaſe followeth of the ſame. And therfore the x. part of that increaſe ſhall be payde as a predialle tithe, and there no deduccion ſhall be made for the charges of it, for it is of herbes and beaſtes that muſt be tythed tythed in tyme, for elſe they may perych and come to naught. But when trees be ſelled, they

to the perfection of the tyeth, & it cannot
not tyeth to entreate but to heare, the most com
modious tyeth is also to be better & more
ground shall fall the tyeth upon that pay the tithe
of the increase and profit accrue of them is formerly
there can no question tyeth rise, and some me taye
that this was the cause why our lord in the said
chapter of Leuitic. tyeth gaue no commaunde-
ment to tythe the fruits but the fruytes of the
trees onely. D. It appeareth in Nehemiah.
that the Iewes in the time of the kinge
Ezechias offered in the temple al thynges that
the grounde brought forth and that was tythed
well and truely.

M. It appeareth not that they did that by the
commaundement of god and therefore it is like
that they did it of their owne deuotion and of a
custome that they had alwaye vsed to the re-
paryng of the temple which the kinge Ezechias
had the commaundement to be repayred and so that
for a memory nothing that tithe should be payed
of trees, and therefore they saye truely that
tithe is due of a man to the entrie he
[illegible] tythe
[illegible] tythe

tithe in woode, the tithe therof wolde serue to lit
sies to that purpose that tithes be payde for that
it is not likely that they that made the lawe for
payment of tithes entended y any tithe shulde
be payde for trees or woode, for the spirituall
ministers muste of necessite spende largly. & nes
cessary, & therfore the tithe of trees or woode that
commeth to seldome wolde serue to litle to the
purpose that it should be payde for that it wolde
not helpe them in theyr necessite so that, if they
should be driuen to sell therto though it might
helpe him in whose time it should happen to fal
yet it shulde deceyue them that trusted to it in
the meane time: and also should leue the parishe
without any to minister to the. D. I wolde
wel agree that for trees that beare frute there
should no predial tithe be payde when they be
solde, for the predial tithe of them is the frutes
that come of the and so there cannot be two pre
dialles of one thynge, as thou hast sayde. But of
other trees that bere no frute me thinketh that
a predial tythe should be payde when they be
solde, & so it apereth y there ought to be by the
constitucion prouincial made by the reuerend fa
ther in God Roberte whylom late Archebi
shope of Cantorbury where it is sayd and decla
red that (silua cedua) is of euery kinde of trees
that haue beynge in that y they should be cut all
that be able to be cut, whereof we will not be
that the possessour of the sayd woodes be compel
led by the officers of the churche to pay to the
parishe churche, or rather churche the tythe as
a real & predial tythe, & so by beynge of that cons

sitis

sizuered
ua

wonde dom
mi non
soluende

Rectes parochiall & personall they must be payde of
such trees as haue no frute, for I wolde wete
gyuen if the lady constantines parochiall shrubbes nor
to trees that bere frutes though the wordes be
generall for all trees as before appereth. &c.
take not the reason why a predial tythe should
not be payde for trees that bere frute to be bet-
cause two predial tythes cannot be payde for one
thynge, for when the tythe is payde of Lambes
wool shall not be payde of wolle of the same sheepe
for it is payde for another increase, for nothynge
be sayd that the frute of a tree is one encrease
and the foliage another, but I take this onely
to be for the two causes before rehersed and also
for as muche as the foliage is not properly an
increase of the trees but a distruccion of the trees
as it is sayd before. And forther I wolde gyue
the minde vpon the lady constantines parochiall
whether wyll that tythe should be payde for trees
by the parishioners of the woode that if the pa-
rishioner sel the woode for .C.li. and gyue the buy-
er conuenyent time to fell it in, what tythe shall the
parishioner pay as longe as the woode standeth
vnfelled. I thynke none for the predial tythe cannot
be payde till the woode be felled & personall tythes
as cannot be payde, as afore this if a man plucke down
his house & selleth it, or sell all his timber, in
whiche case I agree well he shall pay no tythe
neyther predial nor personall. &c. And this
I put case that the byer selleth the woode a-
gayne as it is standyng vpon the ground to another
man. &c. Whether tythe shalbe payde then. &c. I thi-
the fyrst byer shall pay tythe of the surplusage &
y.ii. he

he taketh ouer the C.it that he payde as a personell tithe.

D. Than if the seconde buyer selleth that cut it downe and sel it whan it is cut downe for lesse than he payed, what tythe shal ye thereof be payed.

Than shall he that selleth them paye the tythe for the mesnam a personal tithe.

I cannot se how that can be for neither hath the trees that the personal tythe should be payde for ye ought ought to bee paide nor yet hee (as me thinke) of the ground where the trees growe, and therefore if ought personall tythe shalbe gaued it should be payde either by the first possessour by reason of the worde of the saide constitucion which be that the tithe shal be paid by the possessour of the wood, or by the last buyer because he hath the trees that shalbe tithed. But the thyrde possessour the tithe shal not be payed as a personall for he cut not the boughes as they were ouer cut downe vpon hys bargayne, and by the last buyer it can not be payed neyther as a personall tythe for the saide constitucion saieth that the possessours of the woodes shoulde bee compelled to paye it: And therefore I suppose that the truethe is that in that case no tithe shalbe paide for all the last seller he shal paye no personell tythe for he payed nothynge whiche appereth before, and no predial tythe shalbe paied, for it should be against the said preseruation, and also the cutting downe is the distruccion of trees and not their preseruation as is said before.

D. Than takest thou the saide constitucion to be of smale effecte as it seemeth.

I take

I take it to be of this effecte that of habite is done, for pere is honestly not because it is done
euery to the common lawe and to the lawe of
reason that honestly good in the common lawe
but of habite is done, for pere is not reputed the
same honestly to be good, the consideracion of
not against the lawe of reason because euery
of this matter, for pere is not punished the same
by the lawe. Howbeit some say that by the
very account of the common lawe pere is punished
not be paied for because [illegible] pere is more
than say above, for pere and [illegible]
that case liers by the common lawe [illegible]
because it hath ben fastred to the contrary [illegible]
in many places of the land ben paied [illegible]
paied it dieth, but where they ben not be paied
of a dede [illegible] pere. I thinke some [illegible]
be paied as this day is lawe not [illegible]
but [illegible] it [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible]

ente of theyr fowles than to truſt to theyr owne
opinions, and if they bothe ſo than ſuch matters
were bothe muche the more rather ceſſe than
they ſhuld do by ſuche reaſonynges. ¶ Is this
thinge belongeth to the articles of the faythe. If
thynke the people be bounde to beleue the chur
che, for the church gathered to gyther in the holy
ghoſt cannot erre in ſuch thinges as belonge
to the catholike faythe, but where the churche
maketh any lawes wherby the goodes or poſſe
ſions of the people may be bounde, or by theyr
occaſion or that may be taken fro them there the
people may lawfully reaſon whether the ſame
lawes hindeth them or not for ſuche lawes the
church may erre & be deceyued & deceyue, error
eyther for ſingularite or for couetyſe for fome or
ther cauſe, and for this conſideracion it pertey
neth moſt to them that be learned in the lawe of
the Realme to ſe to ſuche lawes of the church
auſweare of the obteyning of landes or goodes &
to ſe whether they may ſtande with the lawes
of the Realme or not and therfore it is neceſſary
for them to knowe the lawes of the churche that
concerne of diuerſe of executours & adminiſtrators
of legacies teſtamentes matrimonie and diuers other
matters they be bounde to know what the lawe
of ſpirituall the maiſter ſo ſoloned & what the lawe
of the Realme ſuppoſed by cauſe it is not our pur
poſe nowe to ſpeke any more at this
preſent time wherfore I ceſſe to ſpeke of matters
ſpirituall and ſtate temporall, pryde not the
ſtomake be proude what they be ſolue by the owner
ſhip the greate treaſure it is parte of the enheritaſſe

and it is more rather a distruccion of the quiet
tranquyle than an enterace, & therefore they saye
that if a man take a tin kettle and give the lord
ther of the scouthorn to the cuckow that the lorde shal
geve no tithe of that wyth holy another
spechal portion perteyneth but if the other pay tithe
the people have gaine and abundaunce by the
whiche it semeth that it were not agaynst reason
that he should pay a personal tythe of his gaine
the chaunce behouste.

Mon Capo
d spuel

D. I pray the geve me first what thou takest
for a personal tithe and upon what ground per-
sonal tithes were geven as thou thinkest saying
one of us vnlawe not another therin.

I will much good will and therefore thou shalte
understande that as I take it personall tythes
be not paide for any increace of the grounde,
but for such profite as cometh by the labours or
industrie of the person as by hyring and selling
and such other, and such personall tythes as I
take it must be ordered after the custome of the
place where they be to be taken that is to say
not by compulsion but by consent of the persons
perteinyng. For now I suppose that it is good to
geve personall tithes of suche thynges of the
person to whome they be due, as is
to say a person passing for the londe but on the
contrary where the custome is that they should
be paide the people be bound to pay them lyke
as in Kent, the custome is that they
in the diocis of Englishe they be so for the most
personall tythes as well as for corne and
that is by reason of the constitucion prouyncyall

.iiii.

he pay any tythe of that summe. M. What thinke ye then therein. Io. I thinke that he that payeth no tythe, for there as I take it the profite cometh not to him by his diuine studying but by the labor of an other, and as I take it personall tythes be due vnto the parsone for euery profite of whatsoeuer gaine that commeth vnto any man except it come by his owne labour or industry as labour and so it both not here. And also if he should pay tythe of that he selleth the buyer should pay tythe for that very whole value of the thynge. And as I take it the personall tythes for wynne and sellynge shall neuer be taken for the value of the thynge but for the clere gaynes of the thynge, and therefore I take the caues before rehersed where a man selleth his lande or purchaseth vnto a house & selleth the stuffe, that he should there pay no tythe, that it is there to be vnderstande that he hath that lande of holde by gift or by deuise, for if a man buy lande, as the timber and stuffe of a house and sell it for a gayne I suppose that he should pay a personall tythe for that gayne, & this case is not like to a fee or annuye graunted for counsaile where the whole fee should be tythed, for the charges accorde or losse, concerne summe of it be agreeable, for there the whole should be tythed for it is a certaine reuenue or by his owne industry, but in the other case it is not so, and the same reason as for the personall tythes must be made of trees when they be sowen or set to any man and he selleth them to another he shall pay no personall tythe. M. Me thinketh that if the boye ayde in his keping & [illegible]

the house that than the tithe shalbe payd of that that the house hath encreased in value after the gifte: and so it maye be of trees that he shal pay tithe of that, that the trees be anothed after the gifte: as diserent. ℣. Than the tythe muste be the .x. part of the encrease the expences deducte. & than of trees the charges muste also be deducte, for it is than a personall tithe, & there is no tree that is framed mouth and hath part the ground by the growinge that tyme there can no personal tythe be payde by the owner of the grounde whose he setteth them though they have encreased in value ryse. Nether thirdly, I will se ha no further of this matter of their tymes, but I pitch them there that it shall be. Lette a man trees be solde that a man tyth cannot paye them, but a parte of the quantity of Calues, Lambes, Pygges, & such other that come out of the grounde that they be solde, & one part of the encrease thereof be payde of the owners unto the Parsone before. But Lyme, Lede, & Calcine parte of the grounde & the free power of trees growe of themselfe, & be sold growinge to the buyer who hath grounde of trees selle and also the encrease tythe muste be payde accordinge as it was appreased by the olde auncient customes of the countrey, but it maye happen that Lyme, Lede, Coles, and Trees shall not be tythed nor taken in many places and it semeth it cannot be, but muste tithe, & these be the causes of the reasons which they ℣ holde maytayne but I see no principles to be goodnesse in more than I have alredy thinke. ℣. What if a man sell the leaues of his wood whether any tithe ought there to be payde.

Loppes Lurkes

D. They thinke al one kinde of the trees and of the loppes. D.

And if he lie to sell the loppes ones in, ye say yet pere, what holde they than. S. That al is one. D. And what is the reason they the ought not to be paied ther as wel as for wood bought ye pere. S. For they say that the loppes are to be taken of the same condition as the trees: be what sparre so euer they be sette, that no custome shall serue in that case appointed the sparre, no more than it should doe of greene trees. D. And what holde they of the barke of the trees. S. Therein I holde me to

Barke Lurkes

their opinions, but it seemeth to be one lete with the loppes. D. I perceiue wel by that ye haue said hyther to fore that the matter is not so easie to prescribe to be dare of rothers, of trees, Come, a grad, or of any other thynge, but that ye scripture is good for that the spirituall minister haue sufficient before he goe to, shall neyther muzzle &c. S. [illegible] D. And this I [illegible] that they [illegible] the spirituall courte [illegible] [illegible] [illegible]

of any fute be take in the ſpiritual court wherebi
any goodes or landes maybe recouered, wherby
after the grounded of the lawe of the realme
ought not to be ſued there thoughe percafe the
temporall court ſhal holde no plee therof, that yet a
prohibition ſhould lye and after whan it hadde
ſtirmed longe that no tithes wer paid of woode
becauſe of the ſayd prohibition and that after by
proceſſe of tyme ſome curates began to take ti-
thes of woode contrary to the lawe and contra-
ry to the ſayd preſcripcion ſo that variaunce be-
gan to ryſe betwene curates and their pariſhens
in that behalfe, whan for appeaſing of the ſaid va-
riaunce the ſayd ſtatute was made, and that as
it ſemeth more at the calling one of the ſpiritu-
alitye then of the temporalty, for the ſtatute doth
not expreſſely graunt that the prohibition ſhal
ceaſe of tythe woode ſhoulde lye ſo largely as ſhe
ſay it lay by the lawe: howbeit, it doth not re-
ſtraine the common lawe therein as it appereth
euidently bi the wordes of the ſtatute. ſo after
ſome men it appered before the ſtatute, and alſo
after the ſtatute as I haue touched before, that
the ſpirituall courte ought not in that caſe to
haue made any proceſſe for tythe woodes ther-
fore if they did a prohibition lay by the common
lawe and ſuche lawe for if the ſpirituall court make
proceſſe vpon ſuche a legacy as by the lawe of the
realme is voide. As if a man bequeth to ano-
ther manner of beaſte, and the ſpirituall courte
nowadays maketh proceſſe to execute that lega-
cie there a prohibicion lyeth for it appereth euid-
ently by the ſtatute of 23 H. 8. cap. 9. that
tythes

wayes p[ro]
of Charles by
the allowance
of Edward
Coke

al p[ro] quod
vacat Gardner
Solicitor

lybell that in the law of the Realme that legacy is voyde to all ententes. And that he to whome the legacy is made shall neyther haue the horse nor the value of the horse. Also in the lybell it is alleged his laude for .C.li. & he is sued after in the spirituall court for the tithe of the same. C.li. There a prohibicion shall lye, for it appereth in that case openly in the libell that no tythe ought to be payde, & that the spirituall law ought not in that case to make any processe whereby the goodes of hym that solde the laude myght be taken fro hym agayns the law of the Realme, and upon this grounde it is that if a man were sued in the spirituall court now sithe the statute for a mortuary that a prohibicion should lye, for it appereth in the libell that sithe the statute there ought no sute to be taken for mortuaries, and the same law is of any sute were taken in the spirituall courte for a new duty that is of late taken in some places upon leases of personages and vycarages which is called a dimission noble, for it appereth euidently in the libell if any be made therupon that no such processe ought by the law of the Realme to be made in that behalfe, but in that case of tithe corne, or grasse, or sythe other thynges wherin thou hast desyred to knowe my mynde, there appereth nothyng in the libell but that the sute therof of right appertayneth to the spirituall law & so for any thynge that appereth the party may be holpen in the spirituall courte by that prescripcion, & if the case were so farre put that in the spirituall courte they would not alowe the sayd prescripcion, yet I thynke it is a

prohibicion

hibicion shoulde lye, for thoughe the spirituall iudge in a spirituall matter denie the partie all failure, yet the kinges lawes cannot restrayne hym but muste remitte it to theyr conscience. But yet there were some remedye prouided in that case if euere will hould, for sume say that in the spirituall court they myght admitte no plee againste tithes. And also if a composicion were made by assent of the patrone & also of the ordinary betweene a person and one of his parishens that the person and his successours shoulde haue for a certayne grounde so many quarters of corne for his tithe yerely, & after contrary to that composicion the person in the spirituall coute asketh the tithes as they sai, that in this case no prohibicio shoulde lye, ne yet though the case were further put & the allegacion were pleaded in the courte and were disalowed, but al resteth in the conscience of the iudge spirituall as is sayde before home be it because some be of opinō that a prohibicio shoulde lye I this last case, therfore I will reserue it to the iudgement of other, but I the case of the prescripcion before rehersed I take it for the clerer case, that no prohibicion shal lye as I haue sayde before. And I beseche our lorde that this matter and suche other like therto may be so charitably loked vpon that there be not here after suche diuisions ne suche diuersities of opinions therin as hath ben in tyme passe whereby hath folowed greate costes and charges to manye persons in this Realme and that hathe moued me to speake so farre in thys Chapitre, and in diuers other Chapitres of thys present

booke

bookes as I haue done, not entending thereby to gyue occasion to any person to withholde his tythes that of right ought to be payed, nor to alter the possession therin before accustomed but that as me thinketh they ought to be claimed by the same title as they ought to be payed, and by none other, and that it maye also somewhat appere that the said statute of.xiii. of Edward the thyrde was well and lawefully made and vpon a good reasonable consideracion, and that the saide prescripcion is good also, so that no man haue in any daunger of excommunicacion for the making of the said statute, nor yet is not for the obseruing thereof, ne yet of the saide prescripcion as it is noted by some persons that there should be. And thus I commit the vnto our Lorde who euer haue vs the and me in his blessed keping euerlastingly. Amen.

Finis.

Here endeth the seconde Dialogue in Englishe, with newe Addicions betwixte a Doctour and a Student in the lawes of England. And here after followeth the Table.

Hereafter folowyth the table to the firste Booke with certain Additions newly added therto And ouer all the Chapters and questions which be newly added: Ye shal fynd entreied this woorde Addicion, bothe in the Table and also in the boke.

The introduccion.

Of the law eternal. Chap. i.

Of the law of reason, the which by Doctours is called the law of nature of reasonable creature. Chap. ii.

Of the law of god. Chap. iii.

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Of the first ground of the law of Englād. cha. v.

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¶ Here

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